

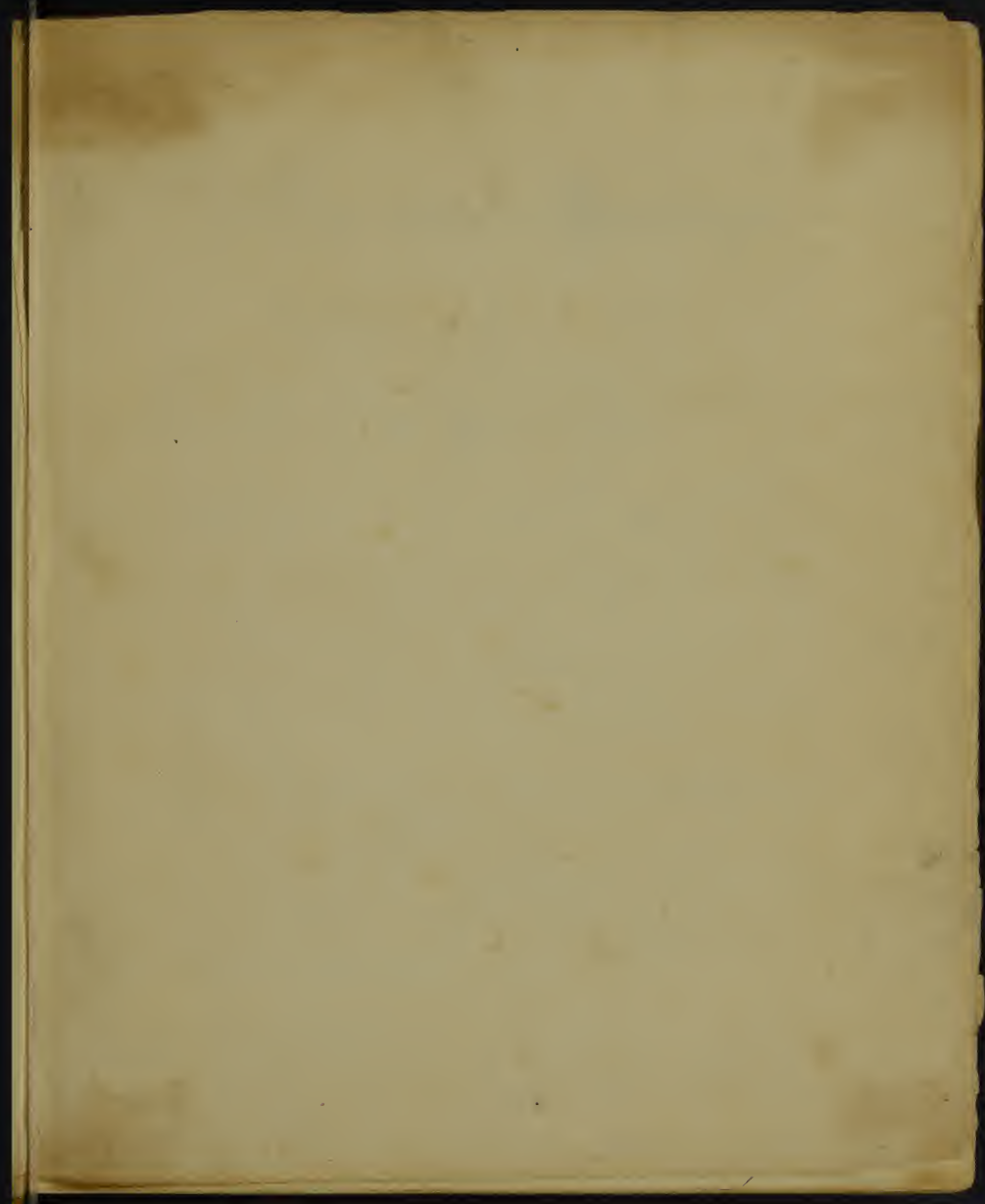
The Litchfield
Historical
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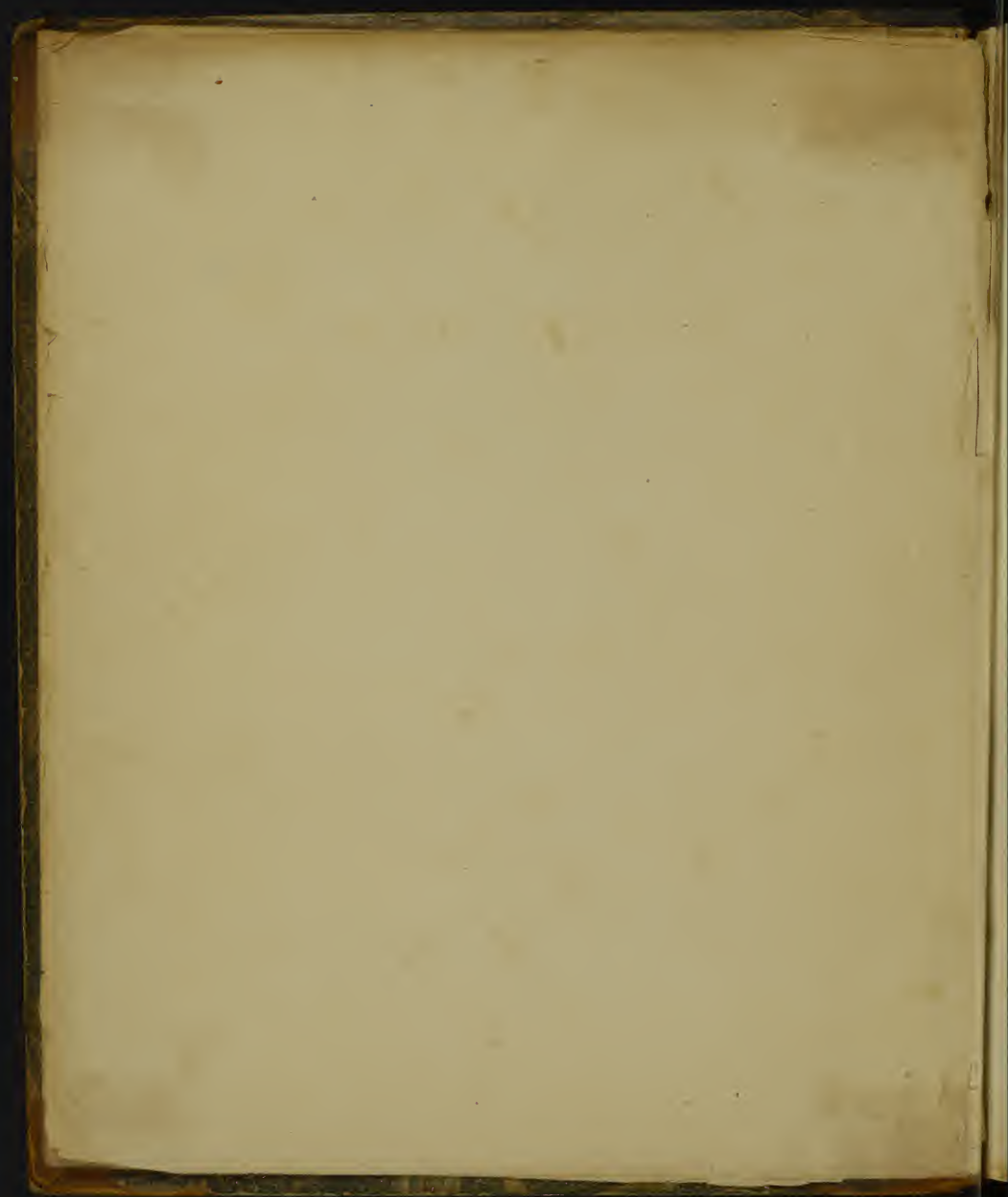
1897

E. B. Aldrich. 1810

Litchfield
Connecticut







Pleas and Pleadings

Lecture July 2 1810

Pleadings are defined to be the mutual allegations between the Plff and Def^t in a suit put into legal form, and set down in writing. 3 B. C. 143
4 Bac. l.
16 Co. 132
All pleadings in civil actions in this country as in Eng^d are required to be in writing. Anciently in Eng^d they were oral delivered viva voce, and then put in writing by a Prothonotary. Frequently they are denominated the Harb.

All pleadings were to be in the English tongue, after the Norman conquest they were in Norman French to the time of 36 of Edward - thence to the George 2 in Latin except in Cromwell's time since that in English. Sims, 122
- 153
- 116. 317
- 121

In private pleadings are nothing more than the setting forth of such facts as constitute the ground of Plff's demand on one side and Def^t's 4 Bac. l.
3 B. C. 149
Dug. 278

Pleadings and Hearings

depend on the other.

1841 2-3
1841 919
Ed. Mansfield observes that the substantial
rules of pleadings are founded in strong sense
and the soundest and closest logic.

1841 319
The great object of pleadings is to present the
claim of Plff and the defence of Dft in such a view
as will most easily admit of a just and impartial
trial, and a subordinate object is to bring the
pleadings to a single point.

Pleading is a syllogistic process. Every good plea
alleges new matter, and every good defence
contains the elements of a good syllogism. Eg.
Defence in trespass - quare clausum fregit
Plff being, pleading says - against him who for-
cibly enters on my land I have a right to recover
damages. Dft has forcibly entered, therefore
eg. I have a right to recover.

1841 345
The first is the major proposition, that is an ab-
solute general legal principle, on which the Plff
relies. The second is the minor one containing
the facts to which the legal principles are to apply
in the particular case. The conclusion is an infer-
ence of law from the application of the general
to the matter of fact stated.

All these are capable of being divided,

Plaint and Pleadings

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The first is capable, for law must be against him; the second for facts must be against him; the third to both must be against him taking all things into consideration. The law has pointed out the mode of denying in all these cases - The first is denied by demurrer or issue in law, which admits the facts but denies a sufficiency of them to found a recovery on. Third, is denied by general issue or special issue is by issue of fact. But if both the first are admitted the conclusion can be answered only by alleging new matter i.e. a special plea in bar - he cannot directly traverse the conclusion. Suppose he traverses a release, this is matter of avoidance of the conclusion, and here is also another exception, viz. If he on whose behalf I have already entered, release to me the trespass, his right to recover damages has ceased. The Plff has released to me the trespass therefore his right to recover has ceased. Here again the Plff may deny either of these propositions; if the first he demurs; if the second then he denies matter of fact; if the third, he must do it by alleging matter and new matter by a special replication. So he might show that the release was obtained

Writ and Writings

by fraud. Then his by *legem* would be that, a re-
lief obtained by fraud is void, this was obtained
by fraud ergo this is void.

The writ

The first stage of the suit in England is the writ.
This is a commanding letter directed to the Sheriff
by lawful authority, the object of it being to
compel the appearance of Def. and the suit
is regularly commenced by issuing the writ. But
no bench suit is not commenced till bill is
filed, for the bill is the original writ there. The
statute being merely introductory.

In common law the writ and declaration issue together
but however in the foundation of the suit, the
writ is not the first stage of the suit any
more than the declaration. But the suit is not
commenced to all purposes till service is made.
It is served by Def. and that tender before ser-
vice is good without tendering costs of writ.

But for most purposes it is commenced by
issuing the writ of course the cause of action
must exist, at the time of drawing the writ
and at the date. So if suit on a bond which is not
due till day after date can be no recovery.

12.4.11
30.6.273
7.2.454
1.4.41
6.6.177
1.12.11
9.4.185
10.10.49
1.4.1923

1.4.1923

Pleas and Pleadings

First stage of pleadings in the extensive sense of the word is the declaration or count. These words are synonymous where there is but one count, but if more than one statement of the cause of action is made they are different. The declaration embraces the whole, count but one.

Of Declaration and Pleas.

Declaration states the ground of recovery. The writ is not part of the pleadings, but con- Laws 95
tains no allegation or allegation, nor proceeding, Part 17
from any party. A count is an amplification or New S 4
exposition of the original writ.

Writ names the cause of action generally, but 320 293
count states particulars, adding time, place &c. 4 Box S.

Detention frequently is mentioned, is used in N. York, is a clause inserted in a bill of Middlesex in a writ in B. R. for the purpose of giving that court jurisdiction in actions purely civil. Or originally they had cognizance of actions only committed to a trial.

But when the person of Deft is in custody of the Marshal, he may be charged in a claim purely civil. Thus in order to get custody & ruin the most cheap. its being done not by force

Pleas and Pleadings.

and answer, then the writ states that he is to answer, &c etiam, and also in action of debt.

Pleadings in the more limited sense of the word mean only those allegations which succeed the count i.e. those of Def^t by way of defence or those made by Pl^f to justify his count or dispose the plea of the Def^t.

846 259
1 Ann. 6
381 771
1 Mac 6
Russ 430
166 6
Pleading is included however under the term pleadings when used in its most extensive sense. The first stage of the pleadings which succeed the count is the Def^t's plea. Def^t must next plead in answer to declarations.

These pleas or Def^t's have a class of two kinds, viz. 1st Dilatory. 2nd the action.

300 401
1st Dilatory pleas are such as tend to delay the suit by questioning the mode of seeking the remedy rather than by questioning, or denying the right of action itself. Hence if they are well founded they will destroy that action tho' not the right of action.

736 901
Dilatory pleas are of three kinds. 1 Pleas to the jurisdiction of the court. 2 Pleas to the disability of the Pl^f. 3 Pleas in abatement. These are according to Blackstone. Other writers question the propriety of this classification. Questioned by Lawes. Totten and Bacon make subdivisions

Pleas and Pleadings

more numerous, this is not peculiar.

Pleas in abatement are distinct from pleas to the jurisdiction. 1. Plea 55

Form of pleading in abatement is different from that in the other two kinds, and so is the conclusion. It also is the object and effect in abatement different. To be sure they are pleaded in dilatory pleas, but they are different from the others. 1. Plea 55

2. Pleas to action.

These are answers to the merits of the case. This goes to the merits of the Plaintiff's claim, and denies the cause of action entirely. It may deny Plaintiff's right of recovery either by denying Plaintiff's allegations, or 2. by conceding or admitting them by reason and fact or 3. by matter of dispute i.e. alleging what shows the impropriety of Plaintiff making the allegations. It does not deny the truth of the allegations or concede and avoid them, but goes to show that he is incompetent for Plaintiff to make the averment respecting his right to recover. 2. Plea 305
1. Plea 307
1. Plea 308
1. Plea 309

Pleas to action are twofold. 1. Plea 305

On old Pleadings

2 Special Plea in bar.

But Deft may deny Plffs right of recovery without pleading viz by demurrer. This is sometimes called a plea, but it is not one, for it is an excuse, & not pleading, it may be taken to declaration or any part of the Pleas. It has not that form of a plea, ie, it says that Deft is not bound to make answer thereto. But a plea is always an answer to declaration. But this says, by your own showing you ought not to recover; so I won't answer.

4 Dec 79
132
1 Inst 716
5 mod 192

Demurrer has sometimes been adapted with pleas to action. This certainly is improper, for it may be in answer to any other part of Pleadings as well as declaration. Indeed to improve to call it a plea to actions.

Thus in of general decisions of Pleadings. But Demurrer will be treated of by itself.

Lecture, July 3. 1810

General rules applicable to all Pleading.

In every plea two things are necessary 1. That

Pleas and Pleadings

2

the substance or matter be sufficient in point of law. 11 That it be expressed according to the forms of law; and the omission of either of these requisites is cause of demurrance.

If substance is omitted it may be reached by general demurrance, but when the defect is in form, it must be by special demurrance.

10. 839
Hob. 164

It is necessary in pleading to state only facts, & as the law may be conclusions from facts, but it is not necessary to state conclusions unless to show the object of stating those facts. Facts then are the objects of pleading. It is never necessary to state conclusions of law. It is true customary law must be stated, but this is considered as matter of fact like any other private matter as a deed, bond &c.

Laws, 146
3 D. R. 76
Dong. 159

2nd Another general rule is every plea should be direct not argumentative, nor by way of recital. The avowment of every thing material must be positive. But this is to be qualified; for if immaterial, as when the thing is matter of inducement, it need not be stated positively, and thus there need not state positively, where the material, yet

Harvard Pleading

it can be distinctly traversed in Pleading, tho
it may be denied in Evidence.

By being direct is meant that Dff should
state in direct and positive terms not the ground
from which he would infer, but the facts them-
selves. He must not say whereas So in a p, b, & c.
This is true, for no issue could be joined. No
argument that he did beat him. This is not by
direct and positive account, not the ground
from which he would infer principal facts.

But holden and established that account fol-
lowing quia pro et quod quia licet and the
like are sufficiently positive and sufficiently
direct.

So not sufficient to state the mere existence of
the principle but to be established this is argu-
mentative. Thus indebtedness - agreement that one
became indebted and of course became liable in
law - not good, for indebtedness and liability
are evidence of promise which being of the
gist must be raised. Again in a promissory note,
that Dff executed a certain writing, reciting

730 408

12th 303

12th 128

12th 156

12th 152

12th 134

12th 119

12th 11

12th 194

12th 47

12th 89

12th 383

12th 100

Plas and Pleasings

4

it and has not paid it, this is not good. There
be that by a certain note he promised. The note
is the evidence of the promise. This decided by
court of error.

Promise is at the gist of the action and
this is stating only the evidence of it: to wit, he
declared he was in possession - that he lost &c
and the other found, not alleging conversion,
not good. The facts stated are only evidence of
a conversion - or they are not.

Suppose one states that J. Hills did wrong
fully that such an one promised &c. This evidently
is not a good declaration, and yet this or prin-
ciple is no worse than the other cases.

See p. 983
L. Hill 7th
Jan 17/4
note

Another general rule is each party admits
as much of his adversary's allegations as he does
not deny. This is a rule in all stages of the plea-
things and these things stand confessed.

4 Bac 2. 98

Each party's pleadings is construed most strong-
ly against himself - for he is supposed to make
the best of his own case. So if two constructions
might be given, that one is taken by the Court

Mans and Pleading

1 Inst 303

Holt 254

4 Inst. 1.

Gen 202

Law 52.

that makes against the Slave.

otherwise Ambiguity would always be made use of. Holt very good on Pleadings.

Another question is in pleading, "Inveritable facts," he must regularly allege time and place. Some time must always be stated tho' not always necessary to prove that time which declaration states. "Place is necessary by way of venue in local actions. In transitory, for by common law it could not be tried but in the same county. Now this is avoided by fiction.

But how can you sue on land made abroad? for rule is it must be in the county where executed? Why he must state that "was executed at City of Litchfield in Tran! - in Parish of St. Michaels in Eng." Is his men smaller of form.

2 Inst 57.

It is also necessary to mention that some number, quantity, and price should be stated. It need not be precise and true except when a mistake would work a variance. Thus in an action for taking horses he may say - "tho he may recover if he prove taking one - the value too.

These exceptions ut supra are more for form

Heads and Pleadings

when it works variance. So if in a note he states
that he bound himself to pay £100, when he re-
ally bound to pay £50. The sum should be
stated exactly. But in matter of Tort no vari-
ance. The evidence must support the Deceit. (1) 12 Mod 49

Another general rule that surplusage does not
vitiate pleadings - maxim is - surplusage is mat-
ter wholly unnecessary. But repugnancy in
any material point vitiates any plea.

2 East 333
Row 63
Cro. 549
12 Mod 368

Repugnancy is such contradiction that one
part destroys the other -
to off in distants.

It is said in Books that every thing
must be pleaded according to its legal opera-
tion, and not according to strict fact. So if one joint-
tenant excopts another to tenant This must be plea-
ded as a release, for he cant excopt both being
already seized of the whole.

To demand by warrant for life to live
- sioner in fee This must be pleaded as a surrender,
or he cant grant.

To if one covenant not to sue his debtor, it
must be pleaded as a release. I suppose this is

Pleadings

language. But that there is no fault in saying
he is loathed, for court of law construe it as release.

So the rule ought to be it may be pleaded
as a release &c not, must be. Wilson says in
2 How. Bl. 11. In the old rule in 4 Bac. 100.

But which appears on record need not be averred.
Example The defence of Doff appears on Pff's
pleading - he need not plead it again.

And necessary circumstances implicit in facts
stated - need not be alleged specially. Thus
in pleading fornication one need not state that
was by livery, of night. Fornication or vice terminis
implicit livery. Yet there are many modern
cases which seem to imply that it is not good
or demurrer. But there are not judicial pre-
decisions, they seem to have been dropped with-
out reflection.

What is admitted in pleading by the
two parties can't be contradicted by either &
not even by the jury by verdict. The party
can't, for they can't retract, nor the jury, for
their province is to find facts in issue, i.e.
which are affirmed on one, and denied on

Hear and Hearings
the other side.

4 Pac. 2.

General Rule, that each party is bound to prove no other than material agreement.

Some express exceptions and he is to prove immaterial agreements viz. when proving the case differently would work a variance.

This is required only when the agreement enters into descriptions of the cause of action and this is now restrained to pleas of Record and written contracts. But an impertinent agreement need never be proved.

Exam! Description of instrument is that on the instrument was on the back of the one in which the other is founded. It is found without any thing on back. It is not the real instrument then. Some agreement goes to description of cause of action.

Indeed in Massfield's time there were two cases. In here, the not cases of contract the description was, as I have mentioned, But now retained (as seen in note to these cases) to prove
2 East 1197
Long 650
7 Bl. 1104
2 Co. 1448
32 L. 111
3d ed. 111
1146

11 July 1847

Business & Readings

of record and written contracts.

But one need never prove impertinent arguments such as are foreign to cause of action as that I have said but this does not enter into description of cause of action. Immaterial circumstances notwithstanding here is technical ones must be proved sometimes, the not always, generally as said. An impertinent argument is a mere recital, of no consequence, when an immaterial argument is added into the cause of action as to make a variation in fact it must be proved.

M.D. 1104

Aug. 640

17. 2446

20. 437

21. 552

If the plea on either side wants form or is irregular, need be the adverse party's pleading. But if it wants substance none. The first is added not on the ground that a verdict will be a plea but on the ground of waiver.

8. 120

1. 113

1. 113

1. 113

1. 113

But if the pleading on the other side in the latter case which pleads over a material fact omitted in the others plea it will aid it. Therefore - he should be cautious of overlooking himself. A fault in action against

8. 147

1. 154

1. 154

1. 154

3 for taking and carrying away a certain iron
hoop - but did not state his proposition of course
the declaration was not in substance, but the
D^{ct} expressly in his plea stated (rather uncer-
tainly,) that he took it from P^{lff}'s proposition, &
it was held to cure the declaration -

Lecture July 3rd 1810

In every stage of pleadings each party has a
right to answer the allegations of the adverse
party by denying them & counteracting and avoiding them in
3^d terms to them. And the case may be that the
answers differ in all these ways. He has
his right till a proper issue is tendered & his
it be accepted. This arises out of the method
of all correct logicians - either to deny the
major, minor, or conclusion.

308.8106.
316
Amo 148.9
- 150
- 158

This in case of assault and battery and wounding,
D^{ct} may make separate answers to them all.

new matter alleged on either side after the
declaration must conclude with a specification.
and this is necessary to give effect to the other

rule i.e. for the purpose of giving the other party
an opportunity of replying in one of the fore-
going methods, for if he was to conclude to
the contrary when he abjured new matter, it
would ~~then~~ be tantamount to an issue in which the
other party must join and would be preclu-
ded from any other answer than denying.

200. 575

200. 712

326. 309.

200. 718

verification is in these words "and thus he is ready
to verify"

The first answer always comes on part of Def^t
suppose then he answer the declⁿ he may deny
by general issue: he may plead in bar, specially
as by infancy, coverture, usury &c. this is confess-
ing and avoiding, or he may demur. If he
pleads general issue, there is no issue in fact;
if he demurs - an issue in law; if he pleads in
bar, the Plff may traverse or abjourn special
matter in avoidance or demur and deny
the legal sufficiency as a bar to the action.

If the Plff traverses the plea in bar an issue
of fact is formed, and if he demurs to it an
issue in law is formed - but if he pleads some
thing new matter, he must conclude with a

Pleadings

8

1. Declaration.

The Pleadings then are 1.st The declaration
2. Plea in bar 3. Replication 4. rejoinder, 5. b.
Surjoinder 6. rebuttal 7. surrebuttal. No Plead-
ings have ever been carried further than the 4. b. c. b.
surrebuttal.

In every successive stage of the Pleadings
whatever is pleaded on either side after the
first plea has been made is intended to pu-
tify what the same party has before pleaded
by answering what is last alleged on the
other side; and if he does not do this it will be
a departure. And finally it is to be observed that
the judgment of the court is always to be ren-
dered on a view of the whole record.

Judgment is to be given against the party
who has committed the first substantial
mistake in pleading. Thus suppose the de-
claration is ill, and the plea in bar frivolous,
and Off demurs to the plea in bar. how
judgment will be rendered for the Defendant;
again suppose the declaration good, the plea
in bar bad, and the replication ill and a

4 Dec. 6
17 Inst. 304.
S. b. 6. 310.
Don. 7.
2 Inst. 1447.

Heard and Standing

Nov 199
9 Co. 20.6
- 133
9 Co. 110
Jalk 173
March 250

demanded to it. Now the court will look to what
upon the whole record, and will give judgment
for the Dff, for Dff made the first mistake.

These are of general rules. -

Of the Declaration

This being the foundation of the suit it must
always show all that is essential to the Dff's
right of action, because the Dff cannot be per-
mitted to prove any material fact which is
not alleged in his declaration. Each party's
proof is to be according to what he has al-
leged.

Nov 34
Nov 144
Nov 17

If the declaration omits any material
fact his ill, and a fortiori if the declaration
disavows any fact affirmatively, which it
appears that the Dff had no cause of action
he cannot have judgment even tho the declar-
ation is otherwise sufficient. So in debt re-
bond, the Dff gives the day of payment, &
it appears that the original writ was dated
before the day of payment had arrived,
now here he must recover.

Nov 4
Jan 250
Nov 94
Dec 10
Feb 125

And a regularly when it appears by the Dff's

Plaintiff and Defendant 6

7

own property, that he has no cause of action as to
part of what he claims he cannot recover for
that part. So if he alleges two distinct breaches
in covenant broken, and in one it appears that
there can be no recovery - there will be none
as to that.

It seems to be settled, however, that if one
bound by contract to another dislates himself
before the time of performance arrives, he may
be sued, and an action sustained before that time
arrives. So if it were now to enjoin B. at the
end of 6 months and at the end of 5 months he
enjoins C. here B. may sue him immediately.

Wright says. W. G. C. that this is not founded
on principle for A. might repurchase it before
the time arrived. (C. 81)

From the above notes you will perceive that
the omission of any thing which is of the gist of
the action is an incurable defect. The gist of the
action is the ground or foundation of it. It is
that without which there can be no recovery
or that without which the Plaintiff cannot have

the law requires the utmost certainty.

This quality of certainty relates to the description of the parties, time and place, & to the subject matter of the suit itself, & these things must be clearly understood - so that a regular issue may be joined, and that the adverse party may know how and what to answer to, and also that the court may give judgment.

As to matter of inducement and aggravation less certainty is requisite than in the gist of the action for they cannot be traversed and therefore cannot be put in issue, and if so it is not necessary that the Def^t should know what to answer to.

1. 1. 8.
2. 1. 8.
3. 1. 8.
4. 1. 8.
5. 1. 8.
6. 1. 8.
7. 1. 8.
8. 1. 8.
9. 1. 8.
10. 1. 8.

This doctrine of certainty I shall explain more fully hereafter, when I come to treat of the subject matter. However I would just observe that the words said, aforesaid, aforesaid, &c. are more sufficiently certain where there are two antecedents to which they may refer.

1. 1. 8.
2. 1. 8.
3. 1. 8.
4. 1. 8.
5. 1. 8.
6. 1. 8.
7. 1. 8.
8. 1. 8.
9. 1. 8.
10. 1. 8.

Plea and Pleadings

Case 2, 1811
- 92
June 1799
102 R 113

A declaration may be in part for recovery, and good for the residue.

When a declaration is really necessary, it is to be taken of the facts by demurrer, or motion in arrest of judgment if at all the the court may, and are bound ex officio to take notice of it. It can't regularly be plea in abatement be reached, but immemor is to be reached by plea in abatement because it don't appear on the face of the declaration.

2 Nov. 8
Feb 21
- 123
15, 20 18
Littles 175

So also where the declaration and writ vary it must be removed by plea in abatement.

A contract which common law is not good without being written, it must be declared upon as written. Such as grant by a lord a contract between the common law, but usually by Stat. required to be written, it must be declared upon as written. But where a contract not required by com. law to be written is by Stat. required to be written it need not be declared upon as written. If of Stat. of lands and tenements. The Stat. int. advice no new rule of pleading, but a rule of evidence merely.

Feb 30
June 1800
Littles 175

At the time of declaring on a debt it is not bound to set forth the any more of it, than is necessary to entitle him to recover. The deed may contain any number of counts, and only one be broken. Now Plaintiff need show only the breach. And so if deed should contain a proviso which would defeat him, he need not state it, but if his is in body of deed, or if his condition precedent he must state it.

If promisor stated the law will raise a promise state the promise must be raised in the declaration, except in case of promisor by notes and bills of exchange.

196
Chit 28
Oler 538
149
2 Cor 14

A declaration may be either general or special. In one case the statement of the cause of action is more general than in the other. So in indebit. Sumpt for money had and received he may state it generally or he may show how he first received money to his use so also in eng. in action for disburse the Plaintiff may declare generally, or he may deduce his own title.

4 Bar. 3.

Thurs. 20 Decemr
Lecture Saty 6th 1851

The joinder of parties in declaration
Joinder of Defts. is general rule that where
two or more persons are jointly interested in
one right they may and ought to join in action
& violation of it. And this is the rule whether
the action founds in tort or contract as in the
"case of joint obligors, covenantees &c. so joint
debtors should join in action of trespass or
their joint estate.

Wheat 149
- 148

3 Benc 696
5 Co. 154
19
522 651

On the other hand when the right violated
is several, or vested in one individual he must
sue alone to it. And if I join further whose
right is not violated there can be no recovery.
This is called a misjoinder and general issue may
be plead in count by Deft.

1 Com 13
1 Geo 6 143
1 Com 153

but the omission to join those who ought to
have been joined is called a ^{non} misjoinder. From
these rules it appears that all the Executors
of an estate ought to join, one can't sue, they
are all but one officer or representative of the
testator. There is a greater unity between Exec^s

than between coparceners. They must be joined
whether under one or not - even if Eric's is - ^{12 and 291}
Jones to not - he must be joined. ^{g. l. 37.}
^{12th. 3.}

But the non-joinder is pleadable in abate-
ment only. There is no exception to this rule
where persons are jointly injured. Suppose two
persons are slandered at the same time by
words here they can't join in one action, for
the injury done to one is no injury to the other.
here the rights are separate and distinct, no
joint right is violated. So also if in a riot ^{4 Dec. 10}
two persons should be beaten by one person, still ^{Oct. 3. 5}
the persons beaten can't join in action of battery, ^{12th. 477}
each may have a separate action. ^{12th. 215}
^{Oct. 3. 77.}

On the other hand, it takes the true rule to be,
as to joinder of defendants that when the cause of
action arises out of the joint act of two or more,
they may be joined, and in contracts they must
be joined as defendants, but where the cause of action
does not arise from the joint act of two or
more, they can't be joined, hence they can't be
joined for slander for repeating the same words.

How and how many

2d R. 177

2d R. 985

2d R. 105

Cr. 674

Cr. 15

2d R. 336

at the same time. But if two join in joint-
binding a debt they may be joined as debtors,
or here the act is joint.

If two or more persons execute a joint bond, they
must be joined and sued together, and so if
they make a joint promise or note, and then in
case of a contract they must be joined. Two or
more join in committing a trespass,
they may or they may not be joined - here all
or one or any part may be joined as debt in
the action. It may two or more persons be joined
for malicious prosecution.

3d R. 18

Hob. 6

2d R. 268

1d R. 10

2d R. 985

And according to distinctions take you will re-
ceive that two persons can't be sued for distinct
acts of tort committed severally.

3d R. 18

2d R. 10

If there are two or more joint obligors, co-contractors,
or promises and one of them dies, the Executor
of the deceased can't join with the survivor in
suing on that contract. In accrescendi there
applies, and right to sue survives to the survivor
alone. But he must account to Executor.
He is trustee for him. So also as the last sur-

Joint and Several

15

who has the sole right to sue it survives to his executor entire, and he must account to the other Executors.

1 Bay 245
East. 497.

As to contracts, if two or more persons make a joint contract, they must all be joined in any action, brought on that contract.

3 Bac 691
4th 697
21st 499

But if two persons bind themselves jointly, severally, either, or all may be sued. But more than one and less than all are not liable to be sued, two of three are not liable to be sued, two can't be considered as either joint or several.

3 Bac 698
4th 716
11th 758
3d 758

And I would here observe that if two or more persons bind themselves by one contract, the contract is joint of course unless the terms of it imply, a several obligation or duty so as to promise to pay implies the same as we jointly, promise to pay. The words jointly and severally will make it a joint and several contract.

3 Bac 697
4th 716
11th 758
Shilly. 175.

And if two persons are bound in a joint contract, and one of them dies, his Executor is not liable at law to be sued with the surviving party in the action.

1 East. 400.

Joinder and Joinder

¶ There are several Exceptions and an action is to be brought ag. them, it can be brought only against those who have promised to accept the trust. Rule is different where they are P's rule.

¶ This is of joinder and nonjoinder.

Joinder of causes of action in one declaration between the same parties. And rule is that several causes between the same parties may be joined in the same declaration if they are of the same nature, but this is a vague rule. By causes of action of the same nature is meant those of similar nature. This rule is not well established.

What is meant by causes of action of the same nature, has been said to be causes which require the same judgments at common law. These are said to be within the rule and may be joined. This is a general, not a universal rule.

Thus debt on bond and debt on loan may be joined in the same declaration making two counts. These are of the same nature. But the

Joinder 2 pl. 9.
Sec. 161
Joinder 557
Joinder 600
Joinder 610

Joinder 610
Joinder 611
Joinder 612

Joinder 613
Joinder 614
Joinder 615
Joinder 616

Plaintiffs

11

general issue here is different. So a debt on judgment, on bond, and on simple contract may all be joined in the same declaration, being similar, the the general issue would be different in all. The gen. issue to debt on judgment would be nil record on bond, non est factus, on bond and on debt, nil debet.

Co. b. 20
1 Inst. 366
1 Inst. 276
1 Inst. 252

Now in these cases the judgment at common law would be the same. I said the last rule was not universal. But universally true that if several causes of action require the same judgment at common law, and the same gen. issue they may be joined. So ten bonds may be sued upon in one Declaration.

1 Inst. 276
1 Inst. 252

And it has been questioned in some books whether an action of detinment can be joined with assault and battery. I see no objection to joining them, they are both trespasses, and both have the same issue, both require either misericordia, or satisfaction.

4 Inst. 12

Pleas and Pleadings

Lecture July 7th 1810.

Several trespasses committed with force may be joined in the same declaration. The judgment is the same. It is a tortious act at common law. Several distinct trespasses on the case may be joined in one declaration, as being of the same nature, action for neglect, slander, &c. malice, prosecution &c. The general issue is the same, and also the judgment is the same. It is a *non est*.

There are examples of cases in which at common law the judgment and the general issue is the same. In such cases they may always be joined. In many cases where the judgment is the same the the general issue is different, they may be joined. as debt and detinue, debt on bond and debt on a loan, in these the judgment is the same the the general issue is not.

So undoubtedly debt and covenant may be joined in one declaration tho I find no case of the kind. nor do I see any objection to joining debt and a promissit. The judgment is the same tho the general issue is different.

2 Co. 4. 8.
1 ant. 223.
1 inst. 252.
2 Ro. 314.
5 Rep. 70.
1 Inst. 280.
Don. 7. 8. 2.
2 Bl. R. 848.

9 Bac. 11.
1 Inst. 20.
310
15 Co. 147.
1 Inst. 300

but when his acts that causes of action of the same nature may be joined. It is to be understood that they all accrue and are sued for in the same right. So causes of action tho of the same kind, if they do not accrue in the same right cannot be united. Thus an Exec^r cannot join in one declaration a count for money had and received on his own account, and another as Executor. Here are two distinct capacities. In the latter case he is only a representative. Besides there is but one judgment viz. that the Plff receive so much - so that it would be uncertain how much is recovered for the Testator and how much for himself.

Salk 10
3 J. Rbs 9
Chas 1271
10 J. 171.
Holt 58
10 mod 316

Next consider what causes of action can be joined - 1st Troppass and contract never can be joined, for here the general issue and judgment are both different. Nor can Troppass and case arising ex delicto be joined. So trespass for taking goods, and trover for converting them cannot be joined. Much less can trespass and case arising

Salk 10
1 Bac 30

Heal and Pleading

ing or contract be joined. Treppap and Murder can't be joined, nor treppap and malicious prosecution, nor treppap and deceit. Treppas is accompanied with force, the others are without force. The judgments are different in the former is a capital, in the latter misrecognition.

Nor can treppap, on the case arising as delictum be joined with a count sounding in contract. To have and a person's right can't be joined with a count sounding in tort committed with or without force can't be joined with a count sounding in contract.

1 Inst. 366
Coke 211
2 Ray 238
1 Wils 319
1 Burr 114
Calk 189
20 Ray 38.

Nor can debt and account be joined the judgment is the same, and they are both founded in contract. Nor can an action of account be joined with any other action, because of the pecuniarity of the proceedings for in every action of account there must be regularly two judgments. first judgment is good complaint, and then the account is to be adjusted by auditors 2nd final judgment is

1 Burr 21
1 Do. 11
1 Mod 142

rendered on the award of the auditors.

Perhaps in Court acts of account might be united with that of book-debt. But I should doubt its propriety, for acts of book-debt need not go before auditors - is optional with the court - the generally auditors are ordered.

To recapitulate the rules on this Subject -
 - II When the judgment and general issue are both the same, they may universally be joined in one declaration in different counts.

2. In many cases where general issue is different they may be joined if judgment is the same. No rule can be given for determining when to apply this - must be learnt from example only.
 3. When the judgments will be different, and a fortiori when judgment and general issue are different, they never can be joined. This is an universal rule.

These three rules are the only ones which are definite that can be laid down on this Subject.

As to effect of joining actions tis to be

Year and Readings

L. H. 10.
Book 136
3 Rev. 99
17 Rev. 100.

observed, that a misjoinder is a good cause of
demurrer, a motion in arrest of judgment.
It is an incurable fault.

A misjoinder of actions is totally distinct from
what is called duplicity. By a misjoinder is
meant the joining in the same declaration
of actions which by law cannot be joined.
Duplicity is a defect in form.

Duplicity is not a radical fault. In case of
misjoinder there can be no proper judgment
rendered. One judgment can't answer for both
counts, but there can be but one.

When it is said that certain causes of action
cannot be joined - then is a material dis-
tinction to be observed between different
causes of action and mere matter of aggra-
vation. Thus, trespass in breaking a house
and beating a servant is good in action
quare clausum, fregit. The beating is matter
of aggravation - It is all one trespass. There
are not two causes of action for if the Def!

6 Inst 388
5 L. R. 361
Book 13

Joins and Pleadings. 10
can justify the breaking, he is in this action
completely acquitted.

164
22 R. 166.7
2 Inst. 1082

A Pff is never obliged by law to join his
actions, tho' of the same kind. Thus if Pff
has ten notes, he may bring ten actions or one.

But the court frequently compel a consoli-
dation of actions - leasts in such case must
be taxed up to the joinder. It is discretionary
with the court. Thus if there is to be a diversity
of defences, they will not order it.

2 Inst. 1082
22 R. 639
2 Inst. 1149
11/8
16 R. 1082
R. 20 to 100

When a declaration is demurred to on the
ground of misjoinder, the rule is that a nolle
prosequi can never be entered as to one and
the other proceed. This has lately been at-
tempted in Long. The reason is that one
cannot destroy the other, and Pff cannot avoid
the declaration.

16 R. 1082

Miscellaneous rules. 1.st Declaration must
agree with the writ for the writ is the foundation

Deeds and Pleadings

1) Bac. 172
173
Buckley, Mar 21
Holt 180
Gen. C. 325

of all subsequent proceedings, and if that is not followed the foundation is destroyed, and the declaration can be applied to no writ.

Co. 10.
1 Sam. 314
320

13 R. 645
do. 125

2 Hen. 3. 74

When the Plff's cause of action is to accrue on the performance of a precedent condition, the performance must be proved. Thus if A is to pay B £1000 when he performs certain business, he must show he has performed it - the want of this element is an incurable defect.

Co. 10.
12 R. 638
Hen. 3. 254
7 R. 574
13 R. 65

But when his right to recover is qualified by a condition subsequent, he is not bound to allege it. The Def. must state it by way of defence.

Gen. 645
Co. 10
Holt. 88
Proben 354
Gen. 265

If there are reciprocal contracts, Plff is not bound to aver performance until the performance of the Def's part is dependant on the Plff's. Thus A promises to pay B. £100 is consideration of a promise to deliver a horse. B may sue on the B. c. without stating the delivery of the horse, because the promise was the con-

action But if A promises to pay B \$100 if he delivers &c B must have delivery. Nov 29 B.

Lecture July 9. 1810.

I observed in my last lecture that action of the same kind might be assented to by the court, and observed that costs must be paid by Plaintiff to the time of the assentation, but that this point has been determined contrary to the opinion I then expressed viz. that the P^lff. should pay costs - This is an universal rule. 2 P. Rep.

If a declaration is good in part and it is fact, and a general demurrer is entered, the demurrer will be overruled and the P^lff may recover on that which is good by assessing his damages for the residue. If action is brought on two ^{or more} debts, and not yet paid due - The other has, and a demurrer is made to the whole, the declaration will be good so far as relates to the bond due.

Hand 256
Bruf 104
Scott 178
10 to 115
Hand 374

But in case of this kind if Plaintiff to give and verdict is found for Plaintiff with entire damages

Moss and Pleadings

Oct. 178
Prof. 104

to judgment will be arrested, because it cannot
be determined how much damages have been
incurred in the good count, and how much
in the bad. But if the amount of each demand
appear on record so that the proportion can be
ascertained - judgment will be good as to the good
counts.

The above rules cannot I think apply to
one entire and indivisible demand, for if his
bad in one point be bad in toto & of in
action of debt with one count and his bad in
one material part, this will destroy the whole.

So when if the plea of Debt is bad in the part
of declaration his bad in toto it must cover
the whole declaration and be a complete answer
to it, otherwise the Plaintiff will recover as well as
then counts to which the plea is a good one, as
in the third. Thus in act of assault, battery &
conspiracy - Debt puts in a plea which might
justify the assault & battery, yet which is not a
justification for the conspiracy - his totally at a
plea, and Plaintiff will recover as well for the assault &

Volume 24
337

battery as for the wounding.

town. 2. p. 25. E.
-36. 7. 25-

If the jury assess greater damages than the
Plff demands, he may release the surplus
take judgment for the residue. It is not neces-
sary indeed that he should release, for the Ct.
will render judgment for the residue and take
a note of the surplus part.

16 115
1. 3. 25
2. 2. 25
3. 6. 4
2. 3. 25

When the town is liable if the Plff by his own
pleading demands more than he is entitled to, &
the jury find more than he is entitled to, he may
waive the excess, and have judgment for the
residue. So if Plff in Judgment should deduct his
little to two pieces of land, and it should appear
that he had no little so one of them, and the jury
should give for both - here he may waive one.

1. 3. 25
1. 3. 25
1. 3. 25
1. 3. 25
1. 3. 25

An insufficient declaration may be avoided as to
the first plea in law. So if it is insufficient in form,
merely pleading over will not avail it, nor if it is insuffi-
cient in substance and the C. of L. shows that in
his plea which ought to have appeared in the

1. 3. 25
1. 3. 25
1. 3. 25
1. 3. 25

New and Readings
intermission this will need it.

Of Pleadings which follow the Declaration.th

395.705
In answer to the declaration it is to be made
on the part of the Def^t. There are either dilato-
tory pleas, which relate to the action. 1st of his dilato-
tory pleas. There are called dilatory pleas
to have formerly used words for purposes of
delay.

In Eng^d. by Stat. 4 and 5 there no dilatory
plea is admitted without an affidavit that it
is true, unless where the defect is apparent
on the face of the writ or declaration. That
pleas only to extrinsic facts. This Stat. is to prevent
false pleas. There is no such Stat. in Massachusetts.

2. B. 11. 187
note
B. 11. 6. 102
3. 101. 5. 1
Dilatory pleas are of three kinds. 1st Pleas to the
jurisdiction of the Court. There are several causes
for which the Def^t may plead to the jurisdiction
an exemption by privilege. As if he is an alien-
age in another count. In Eng^d the regular att-
orneys of our court cannot generally be sued
in another. The reason is that they are consid-

and as officers of the court, and as the three sit
 together, it is to lead to impede the course
 of justice to call them out.

It is also that the cause of action arose out of the
 local limits of the jurisdiction is a good plea.

1 Br 5
 East 11
 334
 10th 544
 10th 107

But the privilege of abjuring, at one place
 of holds only in cases where actions are brought
 against them in their own right a private
 subject, but if it is brought in a representative
 capacity, he cannot plead his privilege, as
 it is said as *Procurator et al v. Minors*. Nor can he
 plead privilege if he is made co-defendant with
 a person not having privilege, and finally he
 cannot waive himself of his privilege when
 the action is of such a nature as not to be cogni-
 zable by his own court. For this would be to
 defeat the action.

10th 585
 10th 2
 10th 149

Where the court has a general jurisdiction
 it is not a good plea that the cause of action
 arose even in a foreign country if the action is
 transitory. But if it is a local action it is a good
 plea always. Generally speaking where the fact

Plea of Forum

- If actus reus is local, the action is local and the defendant is sued in the place where the actus reus was committed. If the actus reus is a movable chattel the action is regularly the first always in a movable property. All local actions are local. For all local actions.

If a covenant is made in one country the covenantor may be sued in any sovereign State or country or nation or of all territory actions. Every sovereign State is as to every other foreign State a foreign State. State of New York is as to Connecticut any of the U. States a foreign State.

1000 161

175

191

1000 161 175 191

101

102

Another plea to jurisdiction is that the court applied to for redress has not jurisdiction of the subject matter. But the Deft does not put in his plea in such case, for the proceedings are all void and Deft may take advantage of it at any stage of the suit, and further the court are bound to dismiss the action ex officio.

1000 161 175 191

1000 161 175 191

1000 161 175 191

1000 161 175 191

1000 161 175 191

This plea is regularly the first in the order of pleading because he said all exceptions to

the jurisdiction are waived if any other plea is made. But the true one is that when his necessity to put in this plea, and he puts in another, he waives exceptions to the jurisdiction.

12th 127
13th 127
Holt 164

According to the English practice, when the jurisdiction is waived by the party and not by his Attorney. In an attorney is an officer of the court and can waive it. When he waives the court and by asking leave, he acknowledges the jurisdiction of the court.

In court we never have adopted such a practice. Attorneys here sign. This then constitutes the acquiescence of the court as that, which refers to the judgment whether the court will have further acquiescence of this suit.

4th 35
3d 30
Case 365
Holt 298
5th 115

There has been a long practice in this court that when an action is dismissed by plea of jurisdiction the court will tax costs on the Plaintiff but if it is dismissed by the court or officer - no cost is taxed. Now I see no reason in this. The court have no more right to render judgment for cost than they have judgment in chief, and I believe this is more

Does not discharge
you out of case.

This allowance of cost by one party
has been intended to prevent the Deft from
using the Plff for bringing his action before a
court which has no cognizance of it. But sure-
ly this will not prevent him from bringing
his action for malicious prosecution if there
are other grounds sufficient; because the
cost is no rule of damages, and also the Deft
has a right to have his damages ascertained
by the jury.

Lecture July 10. 1810.

Dilatory pleas of the second kind are pleas to
the disability of the Plff i.e. pleas which question
the Plff's right or capacity to maintain an
action. There are several grounds for this
plea and 1st and lacy is a good ground, for
as to the disability. But lacy like his removal
till pardon is obtained disables the Plff to pro-
ceed in any civil suit or enforce any legal right.
by lacy when it arises after the cause of act-

7 Dec 761
Lecture
Dec 142
1806/28
1806/20

assesser does not abate the suit - it is but a temporary impediment in such case and remains until the receipt or pardon, and after that the debt must bleed to the same writ.

But if the outlawry had existed before the cause of action accrued it would have destroyed it.

18 Mod 400

4 Bro 35

Law 182

159

This disability however extends only to such suits as are brought in the Plaintiff's own right - and not to those brought in the right of another as Executor for Testator. So an Outlaw may sue as Executor.

1 Inst 128

3 Bro 762

But on the other hand the outlawry of a Testator or Intestate may be pleaded to a suit brought by his Execut^r or Admin^r for the disability goes to the right of the person to be enforced, and the Execut^r can't have any rights which his Testator had not.

1 Mod 6.

But the an outlaw cannot sue in his own right, yet he may be sued like any other person for this disability is intended to deprive him of a right and not punish him with an infirmity.

1 Sid 60

3 Bro 760

Nov 1st

Outlawry may always be pleaded as a detatory

Plea and Pleadings

plea, and it may sometimes be pleaded as a dilatory plea or a plea in law. The rule of discrimination is this - When the cause of action is protected by the outlawry as in case of Robbery his outlawry may be pleaded in bar to all actions for goods, chattels, lands, tenements, &c. &c. &c. in they are forfeited to the crown. Here the outlawry is pleaded to the title and not to the disability. As it may be.

3 Co 159
to 159
Litt 29
123

but when the cause of action is not forfeited, outlawry cannot be pleaded only as a ~~dilatory~~ dilatory plea - for here it goes to his right to maintain the act & not to his title to the thing. So if an outlaw sue in ass. & batt. Har. &c. here his outlawry can be pleaded only to his disability. If therefore an outlaw is injured in his person or reputation, the plea is to his disability, for these rights are not forfeitable. Outlawry is not known in law & the is in every part of the State, as in New York.

1 Inst 125
Dyer 227
1 Bac 761

The next disability at law then is Excommunication.

action. This in Eng^d disables a man to sue in his own and also in the right of another, as in case of breach.

Inst. 133
8 Jac 3
2 Jac 319

Excommunication does not abate i.e. does not stop the suit, but suspends it till absolution, which is the only good special answer to this plea.

5 Co 96
2 Jac 326
1 Inst. 133

Another disability is alienage. This in some cases is a legal disability in the Plaintiff. Not in all cases.

And in to this there are three distinctions to be observed - and 1st alienation ^{com} the alienation - friend, if not naturalized, or made a denizen cannot maintain an action real or mixed.

By real action is meant an action brought for the recovery of something real. By mixed action is meant one brought for the recovery of some interest in lands &c together with damages. All real actions in Eng^d are brought to recover a freehold. Eject^d, waste, &c are mixed actions. 2^d personal action is one brought to recover something personal as money, goods, &c.

I have said that an alien friend cannot

Low 171

3 B. C. 884

Dec. 3 '01

3.6 571

3 ac 4.9.3

4 Dec 1874

6 1. 4. 2. 3.

Page 614

628

June 1734

Courier sent from one Advertiser to another may
 bring a personal action - But if he has a license as
 is frequently given to men of learning engaged
 in literary pursuits, he may have personal action.
 1887 282
 1887 46
 1887 1082
 1887 281
 1887 12166

Whether an action caning not thus protected
 can maintain an action in the right of another,
 as Executor: not as yet settled.
 1887 1017
 1887 82
 1887 94

There are reasons of policy to be urged on both
 sides of this question - I now can think says
 Mr. Gould that brought not to be allowed to sus-
 tain the character of an Executor unless he may
 see as such, if one is allowed the other ought to be.

But I also think that an action may not
 were to be an Executor.

Altho an action cannot maintain a
 not a mixed action, yet he may maintain an
 action in the right of another as Executor for a
 Term of years, he is trustee here and is the only
 person who can sue.
 1887 5-3
 1887 94

There are several other list titles at
 Cambridge, which we have nothing to do with here
 as British currency, proposed marks, Premonition,
 1887 201
 1887 80
 1887

Heas and Dunning

Warden of Helony, and Dunning &c

1848 463
1848 132
46039

Next disability is the plea that is pleaded to
the disability of a female Off. who mar-
ries, that she is gone next is, that she is
a married woman. If the husband joins with
her this plea cannot be made.

1848 125
1848 631

but coverture in the Off. is pleaded only
in abatement is, his plea is only a dela-
tory plea and not as a plea to the act.

1848 788

Is a general rule that whatever may be pleaded
as a delatory plea cannot be pleaded in any other
stage of the pleading.

and if a single woman marries pendente lite this
may be pleaded in abatement for by the mar-
riage she abates the suit.

1848 971
46039

The court however is provided by Stat. that
the suit shall not abate in such case, but that
the husband may appear and be heard with it.

1848 1145
1848 781

That the Off. is an infant suing without Guar-
dian or next friend is pleaded to his liability

for he cannot sue only by Guardian a next friend. Calk. 73
Inst. 135.

And lastly his pleadable to the disability of the Pff. That he is not in reum natura is that he is not in po. So if the action is brought in the name of a fictitious person, this plea may be made. 1 B. & C. 114.
Inst. 14

As to the disability of the Pff. concluded to the person of the Pff. Thus where he prays judgment whether the said Pff ought to be answered.

This is the mode when the disability is a permanent impediment, but when the impediment is temporary, as an outlaw, or excommunicated person, here he prays that the Pff may recover without day till the disability is removed. Sidd. 588
3 B. & C. 103
Law. 183
189

Lecture July 11 1810.

The third kind of dilatory pleas are pleas in abatement. The word abatement in law denotes subtraction or demolition as in case of assurance, Inst. 134 or minority. To abate a writ is to abolish it.

Pleas in abatement generally extend to the writ only. Defects in the count or declaration are reached by pleas of different kinds as by demurrer &c. 1 B. & C. 15
Calk. 199
Inst. 179.
3 B. & C. 1

Plea and Pleading

In *Day*⁹ there is no difficulty in distinguishing between writ and declaration, for one goes out before the other, but in *Conant* they are united.

"The writ is that part which precedes the statement of the cause of action - Declaration usually begins with 'whereupon the Plaintiff declares and says' After the declaration the writ recommences, and of itself not so. The date, recognition, or affiance of duties, and signature of magistrate are all parts of the writ. But the generally, is not universally true that a plea in abatement cannot reach the declaration - as in case of *Winnover*, his proper subject of a plea in abatement is contained in the declaration.

In *variance* between the writ and declaration this it is said is a proper plea to declaration, but

3 Bland 24 says Mr Gould I conceive this goes more properly to the writ, and of course does not form an exception.

203 361

303

15 Bland 8.

36.

105

In *Conant* it is in common practice to take advantage by plea in abatement of a variance between an instrument declared upon

and the statement of it in the declaration.

I say this is not the party, the it can be done at common law, according to Purgis.

There is abatement are always represented both by judges and lawyers as odious, because they generally tend to produce only delay. Hence the rules on this subject are very rigid, more so than in any other kind of pleading except, estoppel. The least inaccuracy in a plea in abatement is fatal.

2 R. 158.6
5. 20 487
Coul. 71. 161
3. 11
Lancet 55. 6
104
134
50 R. 107

Of the Causes & grounds of Abatement.

There are either intrinsic, or extrinsic - The cause may be in the writ itself a intrinsic as in the service of it - 1st Cause of abatement is misnomer and want of additions. Misnomer of Def^t's grounds of abatement whether the mistake is in the writ or declaration.

3 Jac. 674.
16th. 1.
East 117

So also want of Def^t's addition is in Eng^d a cause of abatement. This is a description of Def^t's ^{name} title, degree, ~~name~~, place of abode, tenor, &c. to accu-
-pation. Then, particularly by Stat. 1. Hen. 3^d must be added to the name by way of descrip-
-tion.

16th. 302. 8
auth. 14
16th 371

Plots and Pleadings

It seems that in Eng. the writs are not sufficient with respect to place of abode as in
Continental, but with regard to title, much more,
I think there is no need of title &c.

The Stat. of Hen. 4.5 relates only to personal actions, trespass, and idly, and not to real actions, because in real actions S. H. cannot do it. You describe the land of which he is in possession and his is sufficiently certain.

And as want of addition is pleadable in abatement, so also a mistake in the addition is pleadable in abatement.

In Abatement the only necessary addition is the Plaintiff's name of a title, except from more certainty the title of Eng. is given there is no need of it.

It has however one is sued in an official or the civil capacity that addition is necessary. Thus his civil character is put forward to be the in-

duce more to the action. It is necessary to show a right of action to if one is more as Sheriff, writ must describe him as Sheriff, to Sec. or Alderman?

But when an addition by way of inducement is unnecessary, a mistake does not vitiate the writ.

his more surplusage

See 8 333

Disavowal of one of two Defts is not pleadable
in bar by his co-defendant - nor can he take ad-
vantage of it, except perhaps upon the score
of variance, for the party misnamed may an-
swer to the misnomer there is no injury wrought
to the other Deft. The same rule holds in indict-
ments. 2 East 36177

Has been a question in the books, which does
not appear to me to be settled viz whether if
a writ is abated as to one of several Defts for mis-
nomer, does it abate as to the whole? This is too
generally stated - for I conceive that if the cause
of action is joint, it does abate as to the whole,
for the other Deft might immediately plead the non-
joinder in abatement - but on the other hand
when the cause of action is joint and several I do
not see why of course the writ should abate as to
all if it does as to one. This distinction is more
matter of opinion says Mr Gould.

See 12 96
8 Co 139
2 Bac 25

Is an universal rule laid down as to misnomer
that the Deft who pleads must give the Plaintiff

Pleas and Pleadings

a better writ in he must put both his right name
title & condition. & if he does not his plea is ill.
This relates to all pleas in abatement. By giving
him a better writ is meant giving such a writ
that the Plff may afterwards plead the same writ
to take. But great particularity is necessary in his
plea of misnomer. The Def must not only state
his true name, but he must state the name
by which he was called in the first writ.

And he must also state that he was called and
known by the name which he says is his true
name. And if Def is pleading a statement
beginning in the ^{his plea} juridical form in which he begins a
plea in bar to bad as "The Def the real A. B." this
acknowledges the name which he wishes to deny,
and he must say, - "now C. D. who is called in the writ
A. B. & comes under "Defects".

This ground of abatement is to be taken ad
vantage of only by plea of abatement. It is waived
by pleading to the action. This is founded in policy.
If one recites an instrument by a false or wrong
name and is to be sued on that instrument, it

Mich. 1853
S. 1. 25/5

Mich. 1851

Mich. 1851
S. 1. 249
S. 1. 247
S. 1. 247

Mich. 1857
S. 1. 242

Mich. 1854
S. 1. 2
S. 1. 242
S. 1. 242
S. 1. 242

is said to be the rule that he must be sued by his
wrong name, and his true name is to come in
under an alias. This I conceive, says Mr Gould is
not the proper way. I should say that he ought
to be sued by his proper name, and then to allege
that he signed the instrument with another name. Mr 1213

This is clearly a right and I should say the Eyre 273.
Hunt 216.
3 Mac. 617.
- 616
right way. I have always practised in the lat-
ter method - so when joint is added when it ought
not to be. It was formerly that that a mistake in the Deft's
Christian name was not a ground of abatement. But the
rule is now otherwise and is now upon same footing as a
mistake in the true name. 6 P. 168

When two or more persons are to be sued the writ
must describe all the Defts by their proper names,
the name of the firm or partnership is not good. 5 R. 503

Is different as it respects aggregate corporations,
they are to be sued in their corporate name,
the names of individual conspirators would not
be sufficient.

Is never necessary for Deft for purpose of his
non-suit to take advantage of a misnomer,
for if he should afterwards be sued for the same Mr 1215
3 Mac. 628
thing he may plead the former recovery, men-

Hear and Hearings

turning the machine.

Lecture July 17, 1910

Married Writings 10

31

May 3 1850

May 3 11

May 4 23

May 5 10

Let her, at least, be it was rightly considered, and she shall not be in a state of default at all.

But if a party would not in all the suff of her own will at all, she must plead it in abatement, or cannot plead it in bar, and by pleading once she cannot do enough more.

May 11

May 26

39

It is said in some books that her own will may be pleaded. She may, than in abatement, and in any stage of the proceedings. But it is to be understood that this course can be taken only by the husband, he may plead in his own way, stage of the suit, and may have judgment reversed upon writ of error. He is not in fault for not pleading in abatement and the wife cannot retain the right of her husband.

May 4 10

May 6 31

May 25 4

The writ of error in this case is to be brought in the names of husband and wife - tho she alone could not bring it.

That two Plffs suing, or two Dfs sued as husband and wife are not such in case of abatement. This is not an universal rule, for where a man sues a wife as his wife he may be rejected in many cases.

May 16

19

That two Plffs suing, or two Dfs sued as husband and wife are not such in case of abatement. This is not an universal rule, for where a man sues a wife as his wife he may be rejected in many cases.

May 25

I have said that if an infant is sued

Husband's Rights

without guardian or next friend the suit will abate, but on the other hand if an infant is sued without guardian he is not cured of abatement. The court in such case will give leave for summoning in the Guardian, and if he has none, they will appoint him a guardian ad litem, and this Guardian is appointed by any court.

What 89
- 135
5 to 53
3 B. & 427

If an infant is sued as heir, or an obligation of his ancestor - his infancy cannot be plead in bar, or abatement, but the plead shall descend till he is capable of suing.

What 100
- 165

When the Stat of Court of Wills and Administrators are appointed for lunatics, idiots, and persons of unsound mind, they cannot do anything without consent of their co-receivers - but the same course is taken, and the same rules apply here as in the case of Guardians, and infants.

What 174

Next cause of abatement is the death of the parties to the suit. According to the common law if a sole plaintiff or sole defendant dies pending the suit, it abates.

What 189
Note 134
and 152
1800

The rule was the same if one of several plaintiffs dies pending the suit - there is an exception to

Plas and Pleading

32

This rule is found in actions in case of summons and process, but in real actions there is no exception because in real actions, by the death of one of several Diffs the right of the survivor is increased by ~~jurisdiction~~ *jurisdiction*.

1811 154

1812

1813 7. 8.

1814 154

1815 154

1816 154

It is common law if one of several Diffs died after verdict and before judgment, the judgment was awarded. If one of several Diffs died the rule was that the suit should not abate, but in such case, the course was to make an entry of the death & then to proceed against the survivors.

1817 154

1818 154

1819 154

1820 154

But in this case where one of several Diffs died, if Diffs should mistake and take judgment against all, the whole judgment would be erroneous. Judgment against a dead man is always erroneous, unless by fiction of law, when the case is ready for judgment, but the opinion of Judges is deferred to next term. The entry does not prejudice judgment, will still be removed upon review, because the entry anticipates the death.

1821 154

1822 154

1823 154

These are the rules of the common law, but by Stat. 17 of Chas. 2 and 8. 9. of Geo. 3. & 1. of Geo. 4. the inconvenience by death of parties is removed. ~~It is~~ *It is* the

How can it be done?

2000 in court have a that of a similar kind

Under these facts if there are two or more plaintiffs and one dies pending the suit, the suit does not abate if the cause of action is such as would survive to the survivor - is on the other hand if at the death one dies pending so the action does not abate if the cause of action would survive against the survivor. This is not always the case as in case of husband and wife. In either case the death being suggested on the record, the suit proceeds as before.

As to the case of sole plaintiff a definite rule is that if sole plaintiff dies pending the suit if the cause of action would survive to his executors the suit shall not abate, and so if sole plaintiff dies pending action, suit shall survive on executors if cause of action would survive. This is the rule as laid down in *Day v. Day*.

Is the same except in this, that if the plaintiff dies before an interlocutory judgment has been rendered, the suit will not survive in his executors; and if the plaintiff dies before an interlocutory judgment has been given it cannot survive against his heirs.

But in cases of bequeathing in these two cases is different.

48 Geo. 2.
2nd 1785
11 Geo. 3. 1797
Hutton 22

2 Geo. 2.
1785
Hutton 22

Mass and Mendon

will apply to two Defts both of whom are decaying
the possibility of the suit - it will go to the one
of them who can best.

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How and Pleading)

However is now difficult, you must put in a plea of abatement, tho' the number of authorities to support this rule is small.

So also a variance between instrument and description of it in the writ, is good cause of abatement. As if writ describes a bond us for 4000*l*, and upon agar tis for 8000 - tis too.

When there is a variance between instrument described upon and the description in declaration, tis most in Eng^s to take advantage of it in avoidance under the general issue.

There may be a variance where the contract is a verbal one, and not in writing, here advantage must be taken of it under the general issue, for there can be no plea in abatement here.

In Common when tis written instrument, where the variance is between that and the declaration, we take advantage of it by plea in abatement, and the same may be done in Eng^s.

But when there is a variance between the instrument and the declaration, it may be taken

341
185. 198
Lent
2. 6. 1774
26. 5. 8
201
4. 11. 22. 46
6. 10. 30. 8

6. 10. 11
2. 16. 23. 2
2. 1. 2. 3. 14
1. 10. 1. 1. 1. 7
Lent 2. 11. 1. 1. 1. 1
8. 12.

1. 10. 1. 1. 1. 1
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Heads and Headings

advantage of in Eng. in several ways.

1st by plea in abatement. 2nd By plea of general issue and making objection to the jury. 3rd By praying over, reading it on record, and then moving to set it on trial the Doct. on trial may draw to the evidence in, waive the bond, state the fact, and then say the instrument is not sufficient in law and pray judgment that the jury may be dismissed from further consideration of it.

Test 18
1 Anne 377
How 22
Litt 336
Am 1146
Law 2, 100, 95

I have said that a writ of error as such could only be taken advantage of by plea in abatement. But it may be taken advantage of on variance, many of the foregoing methods.

10 R 156
4 do 612

Lecture July 14, 1810

Another cause of abatement is the non-joinder or non-joinder of parties; in either case the Doct. may plead in abatement. Under this division the distinctions are numerous and important. 1st If one of two suits alone, when several ought to be joined the non-joinder is always pleadable in abatement. Thus if one of two joint tenants sues without the other,

How and Pleadings

33

He pleads in a statement and in certain cases
 demands to be examined and join, or if one of two joint
 obligors, co-obligors, promisors &c.

On the other hand we may several persons sue, when only
 the right of action is in one - it may always be pleaded
 in a statement.

There are certain cases where it is not necessary
 for Def^t to plead in a statement although he has it in
 his power - to in action on contract if one was
 alone where others ought to be joined Def^t may
 take advantage of it under the general issue or
 he may plead it in a statement. If it two or more
 Def^t join where one only ought may take advantage
 of it under the general issue. If the contract is
 written Def^t may lay over of it - recite it on
 the record as demurr.

12th 1871
 134
 145
 148
 13th 291
 144
 72 2243
 12th 72
 13th 143
 14th 144
 15th 144
 16th 144

11th 152
 12th 820
 13th 75
 14th 154
 15th 154
 16th 154

In these two cases the Def^t need not plead in
 a statement, for the contract proves is not the
 contract declared upon. Thus upon over the con-
 tract a person not to be made with at the other Def^t
 but with at B. The proof does not support the
 declaration. According to a late decision if one
 partner in trade, who has withdrawn his name

Plea and Motion

from the plea, he reserves part of the profits,
is not joined in a suit it will not abate the
action - he is not an ostensible partner except
to be sued.

Again if in execution of contract one sees a time
when others ought to be joined and this fact in that
others ought to be joined appears on the face of the
declaration - this declaration is fatally bad and not
used by verdict - and he may also say, re-
cite it and remove if it is a written contract.

But in case of tort his otherwise there is no
such thing as abatement in case of tort. So if one of
two joint tenants sues another person in trespass
for entering on land of joint tenants he cannot take
advantage of the nonjoinder under the general issue,
but can only do it by plea in abatement. Now the
reason of this is that the evidence will not support
the declaration.

In the case of contract it follows now that
I did not promise to you, but to you and B, but
in tort if both joint tenants are not joined, I
cannot make this plea, for he has in fact the property

56 18
Mar 146
Lancs. 133
291.26
13m 38.67

in the off. case he not his sole land. neither
could the Court in this case place the ground upon
the fact of the unjoined appearance on the
face of the declaration itself, but must place in
a balance.

6. J. A. 766
 290
 4. cont.
 826
 1146
 13

Again, in case of bills if there be when the right is in one only, advantage may be taken of it under the general issue. True as in case of contracts and the reason is that the Deft has not committed a trespass on those two Plffs, and you will remark that in case of two or more Plffs, if one recovers, all must, you can't render judgment in favour of one and against the others, but in case of Defs, judgment may in many cases go against one and not another.

5 Dec 200

None part owner of a chattel mes in an action involving in tort, for his share of the damages, and the Court does not plead in abatement the nonjoinder of the other owner, but suffers judgment to be rendered against him, and afterwards the other part owner mes for his share of the damages, the

Joins and Pleadings

7. 2. 279
1. 6. 116
2. 20. 556
— 622

Iff cannot be allowed to plead in abatement of the nonjoinder of the other, but judgment will go against him.

Next of the nonjoinder and omission of Iff and here the rule is, If one of two parties who have been on contract, is one a one, he can regularly take advantage of it only by plea in abatement. So if one of two joint obligors is dead before he must plead in abatement, and so of debtors in joint contract &c unless it appears on the face of the declaration that there is another party to the contract, and that such party is living.

The declaration is not bad unless these two facts appear viz his being joined in the contract and his being alive. There has been great confusion in the Books on this subject, but his now settled. Lord Mansfield's reason for this is that the Iff knows who his partners are but Iff cannot always find them out.

5. 2. 279
2. 20. 557
1. 6. 116
2. 20. 557
2. 20. 557
2. 20. 557
2. 20. 557
2. 20. 557
2. 20. 557
2. 20. 557

The true reason is evidence does

Heas and Herding
not perfect the declaration.

37
L.R. 381
L.R. 446
en. 10

But in case of torts, there is no such thing as non-
responsibility of Debt. in the strict legal sense, for all
torts are joint and several you can sue one, part
or all of them, but you can have but one satisfaction.

Exception to this rule, when the right of action grows
out of a joint tenancy, among Defts, for here action
must be brought ag. all - no reason for this distinction.

1 Bound 490
2 B.R. 101
2 B.R. 162

There is certain cases in Eng^d individuals are bound
to do certain acts as a condition of license, as to
repair a bridge, road &c. Suppose any joint tenant
guilty of this neglect, this is tort and all must be
ind.

Every new Debt who is disclosed by a plea in
abatement, may also plead in abatement that there
is another Debt who ought to be joined, but the one
who pleads this can't plead it a second time. So
if A, B, and C are Defts and A is ruled, if he pleads
that B ought to be joined, and then an action is
brought ag. A & B - B alone, and not A can plead

Cases and Pleadings

2 East 70

That C is another Dft who ought to be joined.

1. Brown 1891

If an action on a joint and several contract made by three, two are dead, they must join the survivor in statement.

1. Brown 1891

2. Hall 26

3. Hall 26

If two persons are joined on a contract when only one is liable, advantage must be taken of it within the general issue - The residue can't support the declaration.

1. East 102

And if two are joined on a contract and the jury find by special verdict that the contract was made by one only - Judgment must be awarded for the whole, no judgment can be rendered against either, because the contract laid in the declaration is negatived by the verdict.

1. East 47

nor can the Dft in this case enter a nolle prosequere to one and proceed with the other, for this would be to change the parties, and substitute one cause of action for another.

Hear and Holdings

Lecture July 16. 1810.

6th another cause of abatement is the pendency of a former suit between the same parties for the same thing. This is to prevent frequent, and vexatious suits. This rule is founded on the maxim that the law abhors a multiplicity of suits. But it is necessary that both suits be of the same kind, or concurrent remedies, and the cause of action the same, otherwise the rule never applies.

1 Bar 13
4 Co. 45

If one misconceives his action, the pendency of the first action is not a foundation of a plea in abatement, otherwise justice would be delayed.

many cases in which different causes of action will arise out of the same transaction Thus mortgage after day of payment - may bring bill for a foreclosure, action of ejectment, and a suit on bond to recover the debt due.

5 Co. 61st
4 Co. 45
Holt 154

And the pendency of a prior suit for the same cause is a good plea, tho the prior suit is in a diff. court. Except to this in Eng^d where the prior suit is in an inferior court

5 Co. 62^a
2 Will. 89
1 Com. 49
- 5

How and Pleadings

It is not necessary for the purpose of abating the second writ, that the first should be actually pending at the time of pleading in abatement. It is sufficient if the last was commenced during the pendency of the former. Second writ was venued at initio.

Ames v. Ames
Case 10
1840-1841

Case 677
1848
1849-1850
1850-1851

A writ is considered as pending from the time of the writ's issuing - i.e. for this purpose the writ is pending.

Case 562
- 562

The practice in Court has introduced another qualification to the general rule - the method of attachment introduced it - see for it authorities.

The case in our law arising from local Statutes in which there may be a p. action at law. viz. action of book debt - writ on book debt is not a bar to the Debt bringing a cross act of book debt. viz. the bill in the other act, the brought in the bill, but have a set off and if balance was found in his favour bill could recover.

Case 562
1848-1849
1849-1850

Whether the general ^{rule} above stated applies to a case in which a new bill is added in answer

not has been matter of dispute. It has been
 held in this case that the second act will abate
 as to both. There is no doubt but it will abate
 as to the first in the first suit. But the question
 whether it abates as to both is not yet settled
 in Eng. its matter of opinion. I should say
 that when the second act is of such nature
 that if there is a recovery ag. one then must
 be ag. both I think it must abate as to both
 but if there can be a recovery ag. one and not
 ag. the other, it ought to abate as to one only.
 So in case of the 13th Reg.

2nd 137
 2nd 97
 2nd 148
 1st 101
 13th 141

on the other hand if an action is in the first
 case brought ag. two, and then a second action is
 brought against one of them for the same cause
 during the pendency of the former doubtless the
 pendency of the first will abate the last.

4th 138
 2nd 141

If the second suit is commenced on the same
 day on which the former suit was abated by
 judgment of court the second shall be presumed to
 have been commenced after the first was abated

Plow on 2^d Reading

plow on 2^d Reading
160

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and shall not abate - You must take notice of the fractional parts of a day.

There is a cause of abatement that a suit for the same cause is pending in a foreign court.

But this general rule mentioned above does not apply to indictments - the pendency of one indictment for the same cause does not abate another, for the courts of criminal jurisdiction have a discretionary power of these indictments and regularly will quash the first indictment - This does not extend to informations - the court has the same power.

166

167

168

In criminal proceedings has been adopted as a rule that if two informations are exhibited on the same day the court will not enquire which was first in point of time, but will suppose them both commenced at the same time and abate them both. The abatement adheres to the maxim that fractions of a day are not regarded.

169

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171

The writs not having duly issued, or not being duly authenticated is a good cause of abatement.

Under this head may be classed any irregularity or informality whatever. Thus if the writ is made returnable to any court not the next after the teste or date - there being sufficient time to make a legal return - it may be pleaded in abatement. There is in this case no necessity for plea in abatement, for the writ is an absolute nullity. Reason is the Off might otherwise harass the Deft by these bad writs, and thus bring cause to trial.

3 wils. 341
Salk. 706
1 Aet. 315
— 316

If the writ is not signed by proper authority it is void - it has no authority and officer is liable for acting under it. To count if there is no certificate of payment of state duty it may be pleaded in abatement. I think a writ of this kind clearly void - So also if the writ has an impossible date as 30 of Feb. 4 is abatable. And any informality is cause of abatement.

Thom. 80
12 Co. 2
6 Co. 65 97
12 Co. 304

If a writ has a defective return it may be abated, by this is meant that period of time between

Hours and Proceedings

Latk 63
on 850
the 415
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the date and time of return. This time at common law is generally 15 days. In Court of Chancery is 12 days before the return and High Court, and 14 in case of foreign attachment.

2 the 833
the 390

in England if the service incurred by officer is insufficient, to be admissible in abatement, but if it is upon the face of it good, the indictment can't be called in question by a plea in abatement, but if to a false return and injury to the plaintiff must sue the officer.

Where the practice is different the Defendant may contradict the indictment by plea in abatement.

2435

our law of attachments requires that where and properly is attached the Plaintiff must leave a copy of the attachment with the town clerk or neglect to do this is not a cause of abatement.

Want of a venue in a writ is cause of abatement and venue defect in declaration is cause of demurrer. The venue is the place at which any fact is alleged to have taken place. This is not

the county, but the town, parish or hundred, and this was necessary for purpose of showing from what part the jury are to be returned.

1100.115
1 Phil 243
1 Bro. 372

But in transitory actions the venue being fatally laid is not cause of abatement. It is mere matter of form. This rule now taken not from the vicinage but from the body of the people. But the court may upon motion change the venue

1 Bro. 372
1 Phil 243
1 Bro. 372
1 Bro. 372
1 Bro. 372

In local actions a wrong venue is a cause of abatement. In the action is to be had in the county in which the local subject is, as ejusdem rei, or the like.

1100.115
117.13
123
1100.115
1100.115

This latter rule applies in our law, but as to transitory actions rule is different. Off may lay his venue so bring action, in any county he pleases.

1100.115

It also is pleasurable in abatement that the action is misconceived. So if case is misconceived for debt. I think this rule applies only when the writ is right and count wrong - for when writ and count agree the proper plea is demurrer.

1100.115
1100.115
1100.115
1100.115

It also is ground of abatement, that cause of

Plea and Pleading

which had not occurred at the commencement of the suit. In certain cases only this is a proper plea, as that suit ag. A. Smith was not before others of A. Smith was granted. So again here, that the ancestor was alive at the commencement of the suit.

See 107
with 174
148 & 149
Lecture 9. 114
16

Lecture July 7. 1840.

Now enter into the substance of the Plea
substantive.

As to the form it begins and concludes by
praying judgment of the court, and where it
tends to the declaration by praying judgment
the declaration. This is not necessarily the
case, for if the plea goes to the person of the
defendant it then prays judgment whether
he ought to answer.

See 107
Lecture 9. 114
16
Lecture 12
Lecture 13

Lecture 13

And when the matter pleaded is other, or
substantive. The usual form is to conclude and
to begin with praying judgment.

Finally when the suit is stated in facts

concerned with bringing judgment whether the
court will be made.

University

The character of a plea to writ is decided by its
construction. The plea is altogether immaterial,
but it is necessary that there should be some
rule on the subject.

Lucas 19

Wheat 6

12 and 14

2 reg 14

According to the Hall when a plea is made, the
plea is to be followed. The beginning and conclusion
whether from the nature of a plea or from the nature
of a plea. He takes this distinction that the
the matter to be decided would be good in law, yet if
the plea begins and concludes in statement, it is
a plea in statement, the if it either begins or
ends as a plea in law. The subject matter will
govern and it will be a plea in law. And after
the same rule of the Hall undoubtedly this is
so. If the subject matter is good in statement,
if it begins and ends in law, it is a plea in law, but
if it either begins or ends in statement, subject

Verdicts & Pleas

whether the person said it with a plea in
abatement. But under the rule must be
established for a more satisfactory rule, unfounded
on any technicalities.

1827-28
1828-29
1829-30
1830-31
1831-32

And now further distinction is to be made if
the subject matter of the plea, whether in law or
in fact, is a statement or in fact, and the lay-
ing in of it as an averment of fact. But
the plea may be that it either is a plea in law
or a statement of fact.

1832-33
1833-34
1834-35
1835-36
1836-37
1837-38
1838-39

If a plea is a statement of fact, it is a matter
of fact, and the only test is whether the
plea is a statement of fact, or a statement of law.
If it is a statement of fact, it is a matter of fact,
and the only test is whether the plea is a
statement of fact, or a statement of law.

1839-40
1840-41
1841-42
1842-43
1843-44

But when a matter is to be put in issue, it is
either in a statement, or in a statement of fact.
The effect is different.

1844-45
1845-46

It is also to be noted that the plea is a statement
of fact, and the only test is whether the plea is a
statement of fact, or a statement of law.

Len. & Pitt. ad. 1840
7. 3. 1840

Plaintiff's Plea

motion for

And after the hearing of a case it has been determined that the Deft shall not be allowed to plead in abatement to a force per se or judgment any thing which he might have pleaded in the original action.

2 May 1800 And writ may be applied as to debt and to good into the residue. Deft in cases of this kind may plead in abatement, not to the action as to the residue. And there is no inconsistency in this - They are the only proper pleas.

A plea in abatement does not generally go to the merits of the action - a judgment therefore when in general we have to a judgment as to the force per se.

The judgment on plea in abatement when decided for Deft is that the writ be stated or quashed in the whole or in part.

The judgment when given for Plff is however to state in abatement is that Deft is not entitled to

But if plea in abatement is necessary, judgment in
Larg^{er} is in chief for Plff, returns to a plea. This
is used to punish the Def^t for pleading dilatory
pleas which are false.

4 Geo 117
7 Geo 367
3 Geo 594
11 Geo 114
2 Geo 364
1 Geo 347

This rule does not hold in criminal cases, for
capital offences.

2 Black 384

In Court the rule in civil cases is, that if a plea
in fact is joined on a plea in abatement, and judg-
ment is found by the judges, judgment shall be
a whole and entire, but if found by the jury
and if the Def^t judgment is in chief.

If matter of abatement is pleaded in bar
the judgment is in chief the plea is bad &
when overruled is none as overruling any plea
to the action.

1 Geo 1170
1 Geo 364
1 Geo 41

If the plea in abatement is sufficient is law
and the allegations in it true, Plff may enter a
satisfactory plea is, saying that his own issue may be
quashed.

1 Geo 363
Laws 116

It is an invariable rule that Def^t cannot
move in abatement in matters of substance in

Plea and Pleasings

He says it is no cause of demerit, nor demerit a
cause to the pleadings only, nor not to the writ. The
rule means that the Deft cannot demur to any
defects in the writ, and if he does, it is, it is go
ing, being in chief, same as if he had demurred to
the declaration.

10th 488

494

10th 129

10th 171

10th 177

10th 177

10th 177

But in case of indictment for capital offences
the rule is new, for if the Deft pleads demerit to a
plea or matter of abatement, judgment would not go
in chief.

10th 171

After a judgment of indictment under a second plea
in abatement cannot be allowed, for it is void. If it is void
he might plead a judgment.

10th 171

10th 171

10th 171

10th 171

But after a judgment in chief at Law in
plea in abatement the Deft answers his writ
and may plead in abatement de novo for his
new writ.

10th 171

It is a rule of Eng. law that after a general
impedance is continuance. Deft cannot plead
in abatement unless the cause of abatement arises
afterwards. An impedance is a continuance of a

10th 171

10th 171

come from one term to another.

After a special impleadance he may plead a statement, for this is one granted in such a way as to give the defendant advantage of all exceptions.

The ground of the rule in case of a general impleadance is, that the defendant receives all exceptions, yet he cannot be said to waive an exception which did not exist at the time of the writ done: as if a house sold is such and she pleads an impleadance and afterwards marries. she may plead her coverture at the next term. —

3 Bl. 318

Bar 9

4 Co. 25

And the rule is the same when the time or rule for pleading in statement has expired. E. p. 107
4 says from the return of the writ.

A count pleas in abatement must be made in the Superior court before the opening of the court in the afternoon of the second day of the next.

In common pleas all pleas in abatement must be made, and filed before the commencing

Abatement

West 864 of the jury, which takes place on the morning
Nat. Con. 342 of the 3^d day of the court.

But the rule is different in law, when the
law continues the action from the first day - as in
Foreign attachment, when the Def^t is out of the
State, the Def^t. Therefore in such case has the
same time allowed him at the second term
which he had at the first.

Matter of abatement cannot be pleaded
after the rule for pleading is out, unless it goes
also in law. Ex. outlaid in some cases. If
matter is both in law and abatement, it must
be pleaded to the return or service &c.

In law to plea in abatement not answered
hands returned to - not common in practice
lately - exception where new cause of abate-
ment arises, tending the fruit.

West 864
Kibb 119
Labo 193
Lectures
Plac 297.

Lecture July 1810

46

Pleas to the action or pleas in bar.

A plea in bar is one which denies the Plaintiff's right to recover or his right of action. Pleas to the action are of two kinds: 1. General issue. General issue is defined by Lord Coke to be a single, simple, material point spring out of the allegations of the parties, and consisting regularly of an affirmative and negative. It consists of an affirmative on one side and a negative on the other. This is called the issue.

12th 120th
Cond. p. 120th

According to the strict view of the common law there must be a direct affirmative on one side and a direct negative on the other to form an issue. Now it is said to be argumentative pleading, which is bar. Now may it be formed by way of implication. Certainly it is implied more than in any other instance. Thus if D. affirms that J. is dead and P. affirms that he is alive, this is not a direct issue as the if one is true the other cannot be.

15th 119th
2d 120th
9th 120th

On the Pleading

It is again the common example of a negative plea
taken. If I say I do not know his title I do not af-
firm that he was seized as he was. I say he
did not as I do not. This is not good pleading,
for it is not a direct denial. But the strength
of the plea is somewhat relaxed in modern times,
the test for the better. It has been decided that
where one claim always and had been, born
in France and the other said he was born in
Eng. it was a good plea - but he ought to have
said he was not born in France but I believe there
is no other similar case.

10th. 11.
1807

There was one exception at law to the
rule in a writ of right. The issue was always
proven by two affirmatives. The plaintiff says
that he has the right and the other says
the defendant says he has a better right than the
affirmant. But this however is not properly
an issue but a case.

10th. 11.
1807

but he always must pass to show the price according to the first rate of the same time for some it takes to agree to the same thing. He always simple and easy it requires nothing but the receipt must be given to the plea.

There is but one of two kinds, general or particular, and what is often called in the books the same more or less is not proper or a name but this is the same as general or particular. Laws 110.

General plea is the denial of all the material allegations in the declaration and puts the plea upon the proof of them so called for cause it denies the whole generally. 34. 110

A special plea is one joined on a specific and particular part of the declaration and is placed in the plea in the largest of pleasings for the declaration may consist of any number of parts each or all of which are necessary to support the action - now to the plea, or to some or all of them. He however not necessary that he do this,

Pleas and Pleadings

Sec 1.
5th. 12
August 1855

For when he pleads the general issue he may deny
all he would have done under special issue
to all actions founded on misfeasance, or arising
no debt - not guilty is - proper general issue
To debt on simple contract "not debt" To debt on
bond or deed "not est factum" To debt on judgment
"not debt as said" To an action of account against
Bailee or carrier "Bare Bailiff & carrier" To an action
to a prompter "not debt" To a prompter "not debt"
To a prompter "not debt" To a prompter "not debt"
To a prompter "not debt" To a prompter "not debt"
To a prompter "not debt" To a prompter "not debt"
To a prompter "not debt" To a prompter "not debt"
To a prompter "not debt" To a prompter "not debt"

Sec 2. 1857
Sec 3. 1857
30.6.305
4.3.1854
3.1.1855

If to debt on bond the Debt pleads not debt
and Debt does not demur, he waives all exceptions
and Debt is let into any defence, which is proper
to the plea of not debt when he properly pleads,
and he may deny the indebtedness and acknowl-
edge the execution.

2.12.58

Plea and Pleadings

40

To an action of debt that to recover the penalty of a Statute "not guilty" is good general issue. The plea that is the appropriate one.

This may be considered as arising, or default, (220-102) and a denial of the offense is as good as a denial. May 26
of the indictment to the party who sues. (120-102) 257

It was formerly holden that "not guilty" was a good gen. issue to an action of a writ of debt because it was called troppap in the case but is now holden that this is not a good gen. issue, (102-102) it is not a void plea and is aided by verdict. The (102-102) 157
his plea on demurrer - his a formal defect only. (102-102)

It was said that not debt was the proper plea to debt on simple contract but it has been holden that to an action for rent "nothing in answer" is a good gen. issue i.e. good plea.

But to debt on covenant nothing in answer is not good plea, for this does deny damages.

And to an action of covenant broken "nothing

Pharad. Harding

July 28

in error is not a good plea nor is an action
of debt on bond for it does not deny the execution

you issue refers to the count or declaration and
not to the writ and so does every plea to the
action. It has in an action of account the count
carries the debt as Receiver of the \$fff and the
declaration is receiver of the \$fff by the hands
of J. S. in plea "never received" now this does
go to the writ but to the declaration only, &

July 126

July 54

\$fff must prove that he was receiver by hands
J. S. Stiles.

The general plea like all issue in fact concludes
regularly to the country i.e. to the jury, and is
to be tried by the jury. This however is not an
action at law at Com. law, for there is a trial
by record, and issue is to be tried by the record
\$fff - also tried by instruction as in case of "Hants"
also trial by wager of Battle and wager of law.
but now there is seldom any other trial of an

issue in fact than by the jury.

I would here remark that according to the strict theory of the common law of Eng. the judges try every issue in fact - the jury never try any thing - the judges try the issue thro the medium of instruction of a jury, same as they try on record by suggesting it. It is important to know this, for this is a rule of law that a party can be but once tried for the same offence, cause of action, and especially in criminal cases will save the jury that case in verdict, and return the papers, how there has been no trial in such case for the jury have not found a verdict. You have seen no 346. 113
prima facie a verdict is given and accepted. This 18th 126
has been so settled in Court and at York.

It is not an universal rule that the general issue concludes to the country, for the gen. issue of not guilty does not conclude to the country, but with a qualification, because

Plas and Pleadings

Whether there is any such record is matter of law
to be tried by the Court, and the party who
- alleges its existence prays that the record may
be introduced by the court.

Term 1838

12, 13, & 14

James 1838

110

- 110

By one that in Court the parties may by agree-
ment have any issue in fact tried by the court,
as in civil cases. But they must agree to do this,
and this agreement must appear on the pleadings.
Thus a. & b. by agreement he puts himself on
the court for trial.

Section 76

But this does not apply to criminal cases
neither does it in actions before single magistrates,
for they try both matter of law and fact.

As to form of pleading, in issue in fact.

"The burden of denial is on the part of the Def.
he concludes thus 'and as this he puts himself
on the country to trial' and if the denial
comes from the Plf, it concludes thus 'and this he
prays may be enquired of by the country'"

Term 1839

15, 16, & 17

This is tendering an issue, or in other words the issue is not joined, when therefore either party declines to the country, the other must add the finality. he also consents that it may be tried by the jury. 13. 235 14th. 176

The omission of the finality in Eng^l has been deemed matter of substance, and judgment has been awarded for omitting it but the adding it when has been resisted is sufficient.

In Court it has been decided that the omission of the finality is no fault. I think however the finality is neither matter of form or substance.

In Eng^l. the postea never shows whether the party joins the issue to the jury or not, but in Court our postea does show this, and this postea supposes the want of a finality, for the only use of a finality is to show that the party to whom the issue was tendered consented to have it tried by the jury, i.e. that he accepted it. 14. 191 15th. 175 16th. 176

and is necessary for Dff to prove that he was
laden with murder at 1,30

But where issue is taken on a collateral point
arising out of the pleadings, then words are of
the substance of the issue. E.g. Dff pleads possession
by deed. Pff traverses it *modo et forma* here on
traversal without deed the good at common law
must be proved. all no 453
664 251
444 25

There is a more obligate rule than the
 foregoing - viz this - *then* formal words do not put
in issue the circumstances attending the principal
matter traversed as time, place &c unless these
circumstances were originally material and ne-
cessary to be proved as laid but when they
were originally material and necessary to be
proved as laid, then they do amount to a de-
trial of the place time, manner &c. Lanc 11
120
Lanc 17

Special issues are of two kinds - Material
and Immaterial - General issue never can be in-

Pleas and Pleadings

- material. at a immaterial issue is one taken on a point which does not reside the merits of the cause. So if taken on matter immaterial, foreign as misprize &c. is immaterial. An immaterial issue is not tried by verdict. His cause for recovery. and a upholder will not be awarded in favor of him who pleads such issue.

4th Ed. 50

18th Ed.

18th Ed.

18th Ed.

18th Ed.

An immaterial issue is one not rightly taken to point of form. This is aided by object to matter of form.

It is a rule that an issue cannot be joined on a negative pregnant, or on an affirmative pregnant.

By a negative pregnant is meant a negative proposition implying an affirmative, which will operate against the pleader.

An affirmative pregnant is an affirmative implying a negative. Thus suppose he pleads that since the date of the writ the Plaintiff has received him, and Plaintiff replies that he did

not release him, since the date of the writ
 this is bad, for it implies that he did release
 him before the date of the writ. Such pleading
 is aided by verdict, and is still only a special
 demurrer.

1 Inst. 126

363

1 Root. 38

Prof. 57

382

But such pleading I take to be good, when the
 negative or affirmative implied in it, is not
 sufficient to maintain what is alleged on the
 other side.

I will now continue the subject of general issue.
 This covers the whole declaration, it includes a denial
 of all the Pff's allegations, and yet in some cases
 the general issue is proper, when the facts alleged
 are not intended to be denied, tho' such cases are
 rare - Thus, when a contract has the absolute in-
 capacity of Deft is void - general issue may be pleaded,

Pleas and Defenses

11th. 17
12th. 17
13th. 17
14th. 17
15th. 17
16th. 17
17th. 17
18th. 17
19th. 17
20th. 17
21st. 17
22nd. 17
23rd. 17
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92nd. 17
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95th. 17
96th. 17
97th. 17
98th. 17
99th. 17
100th. 17

Lead non est actum how this plea generally denies the execution, the it don't have in point of fact -

But when a deed is void in its own nature, and not from an incapacity - you ipse is not a proper plea. So many at common law will not support the plea of non est actum and if the deed is voidable at common law, the general ipse is not a good plea.

And if the incapacity of the obligor is not absolute but qualified or partial non est actum is not a proper plea. So a bond given by an Infant in Debt - this is not a good plea.

Why may not money be given in evidence? Because tis not consistent with the ipse non est actum denies that he ever did make the instrument - but the evidence says he did make it in act, but that is not binding. I think this

could ought to hold in case of them records before mentioned.

There is a distinction between matter of fact and matter of law in case of issue. Issue in fact arises from a point of matter of fact - Issue in law arises out of an affirmative and negative on a point of law. J. & L. Call 2
114 149

Another general rule is that if a specialty is made void by Stat, it must be pleaded and cannot be given in evidence under the gen. issue - In case of warranty - and reason is the defence don't support the issue. In actions brought on deeds, &c, of real, although a want of delivery may be taken advantage of under the general issue non est factum being held void. 56 119
110 72
J. & L. 163
23 1103
56 119
11 22 97
66 123

If such attestation or ratum be made by a stranger in an immaterial point part, without the privy of the obligee, the deed is not vitiated. But if the attestation is made in a material part by a stranger, it would be vitiated. And if any attestation so be made by the obligee himself

Law and Pleadings

by his procurement, even in an immaterial part
the deed is vitiated.

From what has been said you will per-
ceive that matters of fact only are in question
under the general issue. This is the rule in most
cases - the not in a writ, isit: is rule in deeds.

By matters of fact are meant matters of
fact stated in the declaration and does not in
general include defences arising from other
special matter, which in legal operation will
avoid the matter of fact. So in the case of an
unlawful bond - general issue brings in question
the facts only, but usury is special matter of
law growing out of the facts to be sure but in
reality avoiding them.

It does not mean that no questions of law
can arise under the general issue.

Is a general rule in Eng? that in actions
of a writ, any thing which shows that the
Plff had no right to recover at the time of

Plenary Pleading

24

plea, please may be given in evidence under the
general issue. And this applies both to implead
a debt, a promise, and extort a promise. And
as far as it applies to the former I think is
founded on principle, but I think is not
when applied to extort a promise. In the former
the reason of the rule is plain, for there the prom-
ise is laid in debt is a mere fiction of law, the
promise is a mere legal consequence of a duty, but
in the former is a mere fiction whatever destroys
that duty destroys the promise, but in case of
extort a promise is otherwise and I think it
ought to be specially pleaded.

It is clear that in Debt & p. wrong, implead,
debt, release, payment &c may be given in
evidence under general issue.

And this rule also applies to Special or express
debt & p.

11- 448
2- 1610
3- 1583
2- 787
Dag 108
2- 143

Book R. 51
6- 140
1- 142
1- 140
1- 210 -
not the 1
concrete it
ought to be.

Lecture July 30, 1910.

But the the issue of actions of assumpsit, is generally but not settled that the Stat. of Limitations under all off record and satisfaction, and bankruptcy cannot be given in evidence under the general issue in an action of assumpsit, but must be specially pleaded, for they are matters of law. But I see no reason for this distinction; they are no more matters of law than release, trap, and payment.

Wm. 503
L. 278
S. 118
L. 283
Rule 4.

^{debt}
In action of indebit^{debt} or simple contract the Stat. of limitations may be given in evidence under the general issue, for the Stat. comes directly within the issue of debt.

Wm. 506
L. 278
S. 118
L. 283
Rule 4.

To a be to net^{debt} of debt on simple contract a release may be given in evidence under gen' issue, i.e. under plea of not debt, for the evidence relates to the plea. But this can't be done in not^{debt} of debt on bond, for this would admit the execution, and say nothing in avoidance of it.

Pleas and Pleadings

25

The great criterion in order to determine when a
verdict defence may be offered under the gen. issue
is: "If the defence is inconsistent with the plea
of guilty it cannot be given in evidence under
it" now, it may. This rule is by no means uni-
versal.

In an action of assumpsit the plea of "Haver
and Conf." may be given in evd. under gen. issue,
and this is done by founding an objection to the
evidence. 1 Bro. Ct. 42

This branch of pleading, allowed in actions of
assumpsit, is not allowed in Eng^d in actions founded
on facts any more than in actions founded on the
counties. So if in an action of trespass the defendant
wants to avail himself of a plea or excuse he must
plead it specially - and in gen^l all matters of
justification must be specially pleaded, for his
absence to deny the act in his plea and then to
assert and justify it by evidence.

1 Mod. 174

2 Mod. 488

3 Mod. 17

1 Bro. Ct. 252

2 Bro. 252

But is an universal rule that every defence

Mans and Pleasings

which cannot according to the rules of pleading
be specially pleaded may be given in evi-
dence under the general issue.

Lancaster

In Court there is a Statute in respect made
for the benefit of Debtors which varies from the rule

of the non-law, for the inconsistency of the defence with the plea, is not regarded here.

Under one Statute is a rule applying to actions that the Deft may give in evidence under you' plea any matter of defence or justification, except some act of the Plff which discharges his claim or demand, for such acts of Plff can't be given in evidence - it must be some act of the Plff tending to release or discharge a cause of action once existing. Thus a release can't be given in evidence under the 2nd Statute, for this is an act of Plff discharging his demand or claim. Accord and satisfaction, award of Arbitrators, former recovery of judgment for same cause cannot be given in evidence under the general issue.

But the act of the Plff contemplated by this Statute is not one antecedent to the cause of action for this may be given in evidence under you' plea, even tho' it amounts to a justification. In a trespass quare clausum fregit, if the Deft denies the fact himself of a licence he may give it in evidence

Mens and Misdemeanors

under gen. issue.

It is also an other act of the P^lff which shows that he never had a case of act may be given in evidence under the gen^l issue.

So if the act is simulative or in an act of self defense, it may be given in evidence under gen^l issue, for the only act contemplated by the Stat is such an one as discharges the claim or demand.

So insanity, Infancy and Coercion may be given in evidence under the general issue.

It was once held by our Sup^l Ct that women could not be given in evidence under the general issue in an act of self defense, but this decision was reversed in a writ of Error - 1805

The court however made a rule

To count the Stat. of Limitations may be given in evidence under the genl. issue. This is done in case of lost, & unpaid, Book debt and I think it may to debt on bond, tho' it was never attempted, for the lapse of time is not the act of the Plaintiff. 3 J. & B. 13
4 R. 61
Would this mean we were in Eng. -

To say by Swift that the Stat. of Limitations can't be given in evidence under the general issue but this is not correct, for he assigns the wrong reason. viz. that it contradicts the plea, but I have already remarked that that objection is not regarded here. Bellon. 248
2 Holt. 215

Wides in debt and expels a plaintiff the plea of non assumpsit does not mean that the ^{Sett} Plaintiff never assumed, but it means that Sett is not liable to the Plaintiff at the time of pleading. If this is correct the reason of Swift is not true in point of fact. Long 136
2 W. 3143

But on the other hand there are certain acts of the Plaintiff operating as a discharge of his claim,

Hears and Readings

which may be given in evidence under great power.
His book itself is a return may be given in
evidence and so may judgment, for his to be re-
membered that the this that was made to enable
Duff to give in evidence such defences as he
could not at term law, yet it was necessary
to prevent him from giving in evidence under
general issue such defences as he might be
at term law, and this is the true construction of
the Statute.

Vol. 258
p. 279
1844

And I think say, Mr. Gould that a return
may be given in evidence to an action of simple
assumpsit without the wasting a decision of the
court of errors to the contrary.

Brace
Vol. 184

The Duff may instead of blending the general
issue select any particular, material, necessary
fact or allegation going to the gist of the
action and leave to the court to find the
verdict. This course is wrong, save when
there is a number of distinct, separate facts.

each of which is necessary to establish a right of action, and a denial of one is a denial of the whole of action - for by the supposition all are necessary to support the action. This is what is called a special issue.

17th 1892
Jelly 199
Case 171
Court, Mass. Co.
Jelly, court, Mass.
61

A special plea amounting to the general issue is regularly inadmissible - a special plea is one alleging new matter.

A traverse of a single fact is not a special plea - reason of the rule is that if such special pleas were admitted, it would necessarily tangle the record, and besides it would tend to refer to the court matters of fact which ought to go to the jury under the general issue. E.g. In action of trespass Tott pleads an abate in that he was in China at the time. This amounts to the general issue.

This is also matter of fact. If Lewis if a release had been executed, it should go to the court, but they are to judge whether this is a sufficient defence. In a p.p. p. Tott pleads suspension in

Host 127
5 Bac. 202
4 Cr. 269
- 329
3 B. & C. 309
10 Co. 95.

Motion and Pleasings

himself - not good - to shewt plead go before.

As to this rule there are four exceptions -

1st Special plea amounting to the general issue is
good, if it contains special matter of justification.
For this is matter of law and ought to go to the
court.

See 41
Eu. 3. 265
5 Pra. 202.

2nd It com. law in actions of trespass and waste
Plff may plead specially what amounts to the
general issue by giving color to the Plff if he only
blameless title in himself it would be the general
issue, and no more.

1180 39

This giving color consists in alleging some
signed matter in favor of the Plff's right of action
in order to justify an answer to it viz. a plea of
Just title is a special statement.

116 90
no 8 121
126 30
Lancaster 51
126 150

But a special plea of title in actions of trespass
is warranted in law by Stat. which says if
a plea of title in trespass takes a single writ
habeas, it shall be tried by the county court. This

Stat 1.1.3-1.

Others say it is only the grounds of a nation to

1869
C. 1. 202
C. 6. 112. 107
H. 1. 127
L. 1. 177.
S. 1. 15.

Heard's Readings

The court that the gen^l issue on a writ does not be entered on the record. This I take to be the true rule. Indeed it is the most reasonable.

But suppose the court will not allow the plea on motion, and the Def^t yet will not plead gen^l issue or enter a writ direct, but joins in a demurrer, how I suppose judg^t must go on him on the demurrer.

It also after the court have disallowed the plea, if Def^t does not join in demurrer. Iff may take judg^t at by writ direct.

The court the practice is to demand specially, and take judg^t on it in chief as on demurrer. I suppose this is their intention.

That there is a material difference between a special plea amounting to the gen^l issue, and a general plea alleging facts which in evidence would rebut the gen^l issue. In the latter is not necessary on of course one who is amounting to the gen^l issue. Ex. of plea of release in a motion on simple contract - this is good pleading, it would

in evidence support the gen'l issue, not it must be
 general then. In a charge, certainly, the def. must
 deny - will support the gen'l issue by being given
 in evidence under it, yet pleading away &c. is not
 showing the gen'l issue. Denial is by a full rep.
 Just the gen'l issue in actions of assumpsit, and
 in bond in any actions.

July 1778
 18th 1804
 2nd 1815
 24th 1818
 18th 1820

The specific difference between these pleas is this.
 A special plea amounting to the gen'l issue is one
 containing a precise statement of facts, which
 controvert the matter of fact alleged in the decla.

But on the other hand no plea which admits
 that there was once a cause of action that the
 allegations in the declaration are true, amounts
 to the gen'l issue; for a gen'l issue is a denial of
 every material fact alleged in the declaration.
 Ex. Thus a release specially pleaded, shows there
 was once a cause of action. It may be given in ev-
 idence under the general issue in an action of
 debt on simple contract. So in an action of assumpsit,
 infancy pleaded allows the allegations in the dec-

Plaintiffs

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266, 177
3

location to be true. To surer, at least the intention
of the bond or making of the promise to execute.

According to this distinction it is customary in
law to plead specially other defenses than those
originating from the acts of the Plff especially
in contract. The in cases of torts, the
general plea is almost always pleaded.

Structure like of plea is one stating special
facts tending to prove the gen. issue and concluding
with the gen. issue in point of law. The matter
is the gen. issue. E.g. to an action of debt on
bond. But the D. that it was delivered to the Plff as a
loan, to be delivered over to the Plff as a
loan, which condition has not been per-
formed, and "not his act and deed." He
may instead plead non est factum and so in all
cases. It is the case of contract that was constantly
the source of troubling the gen. issue.

This is with the gen. issue with an issue, which
is a common mode of signifying it, because the intent

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3

On the Plea of Guilt

61

Whether the plea is in fact & it is not so.

62

But the plea concludes to the country or with a
 conviction? I think it ought to conclude to
 the country; for it really the plea is a plea of
 acquittal with a conviction, for it also states
 a finding that amounting to the general issue, and
 thus it is a different kind of plea from the usual
 plea with no issue, but a plea having every
 substance of a special plea amounts to general issue
 which is said.

It is the conclusion to the country or to the jury, and to
 the judge.

Greatly
 13. Oct. 2. 1865
 14. Oct. 1865
 15. Oct. 1865
 16. Oct. 1865
 17. Oct. 1865

In deeds the mode of pleading is advantageous to
 the off in giving them notice of the true defence &
 comparing the evidence and the attention of the
 jury to the particular facts stated.

18. Oct. 1865

This plea may be demurred to; tho it concludes to
 the country; for this conclusion is from facts said to
 be a defence and whether it is a sufficient answer
 or not, ought to go to the court.

Howard Holdings

posed this is the mode in our country courts
generally, yet it seems questionable from Gilbert
not cited.

Apparently it was the mode in case of conversion.
Here in case of land was an entry in point of form;
but was void to reason of something extrinsic as
fraud, or became so by matter of fact
as seizure or intermeddling. It must, I think
with an effort, I can now

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Holt says all such special non est actions
are superfluous as they impose the same burden
on the Defendant.

Now far of Gen. Case.

Of Special Pleas in bar.

That is the action of the second kind
are special pleas in bar.

A special plea in bar is defined to be one
which avails the facts stated in the declaration

but leaves them by new matter.

43a. 1.

But this the gen. l. is not universally true; for sometimes such special plea traverses some part of the declaration. E. g. If in trespass, Defendant pleads a release, he must traverse that he has committed any trespasses subsequent to the release.

Vol. 104
43a. 2
114
115
116

There is a species of special plea in law a rather a defence pleaded in the form of a plea in law, which does not admit the facts, going to the gist of the action, and this is the defence of non est.

Pleas in trespass are such matters of record as some writing under seal which precludes the Plaintiff from pleading some particular facts "precludes the Plaintiff by law from averring the facts stated in the declaration. It is indeed a plea in law, but does not admit any of the facts stated so this does not come within the definition.

135.
136
146.
155
161
171
180
181
182

What is a Plea?

Page 91
Vol. 2
p. 93

A plea in bar does regularly admit all
haverable facts or allegations in the declaration,
which are not traversed by it and is always in
recognition of them which it admits.

Page 92
Vol. 2
p. 94
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p. 95

But the law generally says that a plea in bar
admits all haverable allegations which are not
traversed by it; yet every plea of justification
in treppah must expressly confess the facts intended
to be insisted, because to say to be allowed to jus-
tify a fact which is not confessed is not necessary
in this case; because of the one directly admits.

A party may expressly admit what operates in
his bar and thus make it a part of his case.

A special plea in bar always admits some
and special matter and is so called a special plea.

This ruling, shews it leaves the great issue which
admits nothing new.

This special matter is usually in appearance;
the act shews. For if negative commands are
in the plea must state that he has not done
the act, even when not to be done.

2 H. 104

And as this plea admits new matter, it must
regularly conclude with a verification instead of
swearing to the country. For as long as new matter
is introduced in the proper place is rendered, the
opposing party must have opportunity of re-
sponding to it in either of three ways, viz either by
denying the allegations, or by answering to
them, or by confessing and avoiding them by new
facts. This is the established mode of keeping
the pleadings open.

Lawes 158
Coop 575
2 H. 102
3 H. 125
Coop 179
3 H. 104

There is indeed introduced in Eng^l by Stat 5 Geo 2^d
a special plea of factum, by concluding to the
country, the consistency of special matter.

Lawes 145
224
227

Form and Substance

6/11/57

Form and

But in cases which are merely in the negative, we
do not conclude with a formal verification, since the
early allodging is not bound to prove it.

6/11/57

2/11/57

6/11/57

6/11/57

6/11/57

But cases which are formal and proper
are not bound to the country;

6/11/57

6/11/57

6/11/57

6/11/57

6/11/57

When the Left allodges distinct special matters
to different parts of the declaration, he may con-
clude at his election each with a verification, or
the whole with one.

Ex. Let in minute contract Left allodges, however
a part bound and verification as to as other part,
and a return as to the residue, so he may plead, he
may conclude each with a verification or the whole
with one.

The affirmative takes the same form and substance.
As a general rule every special plea regularly
demands as of course that it does not hang, and so
it is the case. Hence not defect is not a good plea.

to what are bonds for it admits the execution of the instrument and advances nothing in accordance of the duty.

There are some good equities to be observed in order to good pleading.

Black's general rule is this "Every Defendant must plead such a plea as is pertinent, and proper, according to the parity of his case, estate and interest" - Hut 255
- 203

But certain rules more definite must be observed.

1st Every Special plea must contain certain averments of matter in law, because it is not liable to be taken in issue. In contract Defendant should plead that he is ready to pay without more he need not aver that he is not liable, and is not liable, and because not liable he is not capable of proof.

And every Special plea in which fact and law

Mean and Reasoning

are so blended that they cannot be separated
at all. Now in the action of labor in supplying the
goods of all the world that he was lawfully
entitled to the goods of all persons, since that these
were the owners of persons. Here the first point is to
be whether he was lawfully entitled or is entitled
of having the goods of all. The second point which
proves that he is lawfully entitled to the goods of all
persons.

2nd of very important nature is that the labor in
the first person the whole government or common
franchise or it is all for the whole.

Now it is more true to say a small and laboring
and working. Left should justify only the right, but
the whole wants to have in whole for the left is not
allowed to feel any hint of the debt and an-
swer that only, that it might be a part, the
might be another, and in dis'ance with remaining
the whole. The main answer the whole or none i.e.
his labor should be as broad as the deduction or

Oct 8 1866
Law. J. London
P. 1

It is unavailing.

In a case of a return pleaded to an action of trespass the return is bad without a traverse of all trespasses subsequent to the date of the release.

In a case of a judgment he must traverse all trespasses before the judgment. So if a license is pleaded it must include with an averment that all trespasses committed both before and after the licence.

1844
321
1. 1. 2. 6. 96
James 1. 3. 5
and 7. 9. 10
note
2. 20. 5. 0
177
110. 6. 5

It also is an act against a Bailor to whom goods are delivered to keep and to carry. Debt binds a discharge as to the carrying but this does not extend to the duty of keeping them, and so is bad. For it does not answer the whole of a claim.

In a case of slander for saying she is a thief and that she pleads she is a thief and that she knows this is bad, for it does not answer the charge as to the fact. If a specific charge is made, the charge must be specifically answered.

1844
321
1. 1. 2. 6. 96
James 1. 3. 5
and 7. 9. 10
note
2. 20. 5. 0
177
110. 6. 5

Heas in 1. Gladys!

By the note which is required that Jeff should answer the whole question in one plea; but he may plead one plea as to fact and another plea as to the evidence. If the plea of assault and battery, Jeff pleads not guilty to fact and a justification to the rest: to be sure however a hard plea in law to a fact and defence to the evidence, but still taken together must be a complete answer to the whole gravamen or cause of action.

The same point quite holds also in all the subsequent pleadings. In the whole question substance of the plea in law must be answered, to the satisfaction of justice so must be substantiated in answer of the defence to it will be defective.

But with regard to Heas which do not answer the whole gravamen these distinctions should be observed. If the plea imports to be an answer to the whole note is in law an answer to a part only, the plea should demur, for it is insufficient for the

Quint 18
1860

whole and it is pleaded as to the whole.

But if the plea imports a defence as an answer to part only, and is in law a defence to a part only, it is a ~~discontinuation~~ ^{discontinuation}, and the Jst should not demur; but take judgment by *nil dicat*. It is so because it imports only an answer to a part.

If Jst does demur he discontinue in own action because he accepts an insufficient plea.

There is some confusion in the books on this subject.

But it seems to me, it's importing to partly an answer to part, is good reason for taking judgment by *nil dicat*. Suppose Jst pleads a plea to a part which if pleaded to the whole, would be good for the whole - here Mr. G. says Jst should take judgment by *nil dicat*. Disturbed in the books.

But notwithstanding the preceding rule - this is true that a justification or any other defence which avers the gist of the act avers the whole ground - and of every all matters of aggravation.

This is an answer to the whole declaration. E.g.

See 798 note
Salk. 179
2. Rep. 831
H. 363
4. 6. 82
182, 2427
Lanc. 135
136

Hear and Readings

Defendant's plea for breaking and entering the Plaintiff's house and expelling him therefrom - a plea justifying the breaking and entering is sufficient - for expelling him is matter of aggravation - We leave the Plaintiff afterwards makes a novel assignment in his replication.

A novel or new assignment is defined to be a more particular statement in the replication of something stated generally in the declaration. It is in the nature of a new declaration.

Suppose then the act of trespass to be stated now if the Plaintiff wishes to rely on the expulsion as a distinct trespass, and a substantive ground of recovery - he may do it in the replication by way of novel assignment, and to this Defendant plead as to a new declaration in general issue, as not guilty to trespass &c or any other plea which he might have pleaded, had it been the only thing contained in the declaration.

72. 240

108. 240

149

170. 255

340. 311

340. 311

340. 311

340. 311

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340. 311

340. 311

The office of a novel assignment is to take out of the files in the handwriting to which it is due, or other defence made in answer to a good answer.

The novel assignment must always contain an agreement that the shapes described in it are different - in "other and diverse" from those mentioned in the letter in the other defence. But this agreement in the explanation in novel assignment cannot be traversed - for in this case the Deft pleads, that the jury did not find, and then unless it appears in evidence that the shapes are distinct. The novel assignment cannot be supported, and the Deft will still prevail on his plea.

Case 249 a
with
leaves 164 & 5
241
for form of
novel assign.

It is obviously necessary for the Deft to set forth specially all the particulars (however numerous) of any defence consisting of special matter of avoidance.

249 a
5 & 170

New and Old Pleasings

But even great pleasing is sometimes allowed to avoid reality, and the rule is expressed by Coke that where the particular facts, if actually set forth would tend to infiniteness in great-
 ternity, great pleasing is allowed. So where one wishes to plead performance of covenants, the performance of which must contain a great variety of facts he may plead generally in the form of a Sheriff's writ of immunity nisi on Default. The Statute is not to have performance specifically of money set down, or writ served for 20 years, but he may plead generally. As a butcher covenants to deliver to I and his heirs hides for 20 years -
 "pleading performance generally is good."

1. Bond 1000
 1. Bond 111
 2. Bond 149
 1. Bond 115
 Rent 250
 1. Bond 75
 2. Bond 10.1

But this general plea of performance cannot be pleaded to an action on covenant where some of the covenants are negative, for negative covenants cannot be performed. There are covenants not to do to the point. Hence it that the Deft has not done

Re 200
 1. Bond 100

The act which he was wanted not to do.

187
2nd 103
1st 104
1st 105

Hardy performance of negative consent is merely a formal defect and no advantage can be taken of it except by special demand; for it is very dear that the plea of performance in the last case is merely that Jeff has not done the act committed against.

2nd 103

It is some duty on his side to have a number of friends in order to a better defence.

2nd 104
1st 105

General case that repugnancy in a material point vitiates the plea; but if in an immaterial point it is void. Here his impotence only.

So impotence is then either a foreign matter or repugnancy in an immaterial point. Repugnancy in date is no error. Enquire what is the difference between day and date.

2nd 103
1st 103
2nd 104

Edwards is a man of the right of action goes generally the way of the law of the day.

2nd 105
1st 106
1st 107
1st 108
1st 109

But repugnancy in day is in a material point. Thus perhaps in the case of Power, Jeff should state in his declaration that on the first day of

How and How long

November 1905 he lost his goods and that on the
following Left hand Men, who on the first day
of the year in the same year converted them;
the words were on your promises, for the day
is a good material - I was not not used by
himself.

But if Mr. had said that he lost in 2 Left-
hand in Nov. and afterwards" in a letter con-
verted them, this would be good after the fact,
for October would be rejected as more for the day.
The letter or "afterwards" makes it good.

It is to the form of beginning and concluding
the first phase in the and reflections on the
margin.

January 1888
1245
1254
1261

Pleas and Pleadings
Traverse.

69

A traverse is a denial of some particular point
alleged in the pleadings and always tends an
issue.

It may be taken to any part of the pleadings
including the declaration; to any special ver-
dict, plea, or to any special matter alleged.
It cannot clearly be taken to the general issue.

19th 232
plea 183
4830000

When a traverse is preceded by special
matter by way of amendment it is called a
special traverse. It is most accurate to say that a traverse
is a denial of some particular point.

cases 116
117

A traverse properly so called is usually taken
with the words "aliquid hoc" without this "and con-
cludes against the plaintiff."

It is said in books that a traverse when properly
taken always closes the issue. This is clearly in-
correct. A formal traverse does not instantly
close an issue but tends an issue with an
aliquid hoc which is the only form of a trap

How old Montague

Nov 14

June 91

Dec 91

Mar 91

Aug 91

Nov 91

Jan 92

Mar 92

May 92

usual however and regularly considered with
recognition but a recognition is never the
basis of showing and there.

Thus in these last places in law that J. S. died
seized in fee - recognition is that he died seized
in tail, although he, that he died seized in fee
with a recognition. This is a formal, technical
recourse, but this recourse does not close or even
form the issue, but merely tensors the issue. The
issue is then formed by the facts replying over
that J. S. died seized in fee in manner and form
as he had before alleged in his plea in law.

Then words although he, are words of showing
seized in the law, but they are not inconsistent
with a constitution a recourse, for he is told
that the words it was with answer. However
they are generally used.

Mar 92

May 92

Aug 92

Nov 92

Jan 93

Mar 93

May 93

Aug 93

Nov 93

Jan 94

Mar 94

May 94

Aug 94

Nov 94

Although he, is not to be used in all that is alleged

on the other side.

20.57

It is a general rule - for the sake of which I
 have concluded with a verification that a general
 traverse which reaches the whole of what is in-
 tended on the other side constitutes regularly
 to the country. Thus from the application "the
 empire" to the constitution is to the country. The
 right to make a law, and to be? leads to a small
 demand. There is a general traverse going to all
 the defence, and in these words viz. "de ma ma-
 jorité" "majorité" "majorité". These words
 are a general negation of the whole defence, then-
 ded, and the traverse constitutes to the country.

Jan 15. 8.
 Apr 27. 5.
 Aug. 7.
 Feb 4.
 7. 8. 185.
 18. 1. 7. 1.
 Aug. 18. 8.
 18. 1. 7. 1.
 18. 1. 7. 1.

But why is this difference between the consti-
 tution of a general traverse which is with a ver-
 ification and a general traverse which is to the country?
 A general traverse ought to conclude with
 a verification for two reasons -

Plena et Sola Testimony

1st It may be on the immaterial point, and if so the adverse party ought not to be bound to give evidence because the pleadings should be taken upon that the party against whom the traverse is made may abandon it on good reason. Is it right not to conclude to the contrary.

2nd In certain cases where the traverse is material, the adverse party may snap it by altogether, and take a traverse himself upon the innuendo, which he could not do if it conduces to the contrary. Ego a special traverse must conclude with a justification.

But in the case of a general traverse, it certainly cannot be immaterial because it reaches the whole of what is alleged on the other side, and so the pleadings cannot be left open. It is also impossible to abandon a general traverse.

and take advantage because it reaches the whole matter i.e. it is a denial of the whole matter admitted and therefore cannot be abandoned without being guilty of defection and should therefore be insisted on to the country. The words argument and verification as they relate to the exclusion of a plea are used as synonymous. Case 132
184

Said by Buller in dissent (Special Pleader) that a general traverse may in some cases conclude with a verification or to the country. The reason assigned is that such are the precedents. There is no reason nor principle for leaving the pleadings open after a general traverse unless it be to conclude at special traverse which can conclude to the country. But no reason can be given why a general traverse should conclude with a verification or to it is that the pleadings should be left open and the

Heard and Hearings

principles of pleading now more rigorous than
in case of a joint defence. But it is the law that
they may be.

MS 448

2 June 1842

Am 11/12

As in the case above stated the Deft to an
action of assault and battery pleads in a joint de-
fence in that the Plff made the first attack;
and the Plff denies the whole by a general traverse.

We may conclude with a modification of the count
but what is the use of this liberty? The Plff
cannot deny to it or alledge any matter. But
in every case a joint defence cannot conclude
either way. It is only in those cases where it has
been allowed, for in no other do I think it would be.

Of Technical Traverse

A technical traverse (this is the true consisting of

The words "abque hoc" differs from a direct and positive denial of a fact, not only in distinction, but in the conclusion generally. When the answer is a special one, it differs always in both; but where it is a general one, it differs only in form and not in the conclusion.

Jan 15, 1849

This direct and positive denial of a fact is the proper mode where the party touching the issue introduces a new matter. Thus where one pleads in abate ^{2d} that his co-defendant is dead. The plaintiff replies that he is alive abque hoc that he is "dead." This is a technical traverse but instead of this the plaintiff may reply by a direct and positive denial that he is not dead, and conclude to the country. Thus again the defendant pleads an accord and satisfaction. The plaintiff replies some new matter and concludes with a technical traverse.

But if it is not necessary to allege new matter the plaintiff may reply that it was not accorded so

Plea and Denial

and conclude directly to the contrary. So this technical matter differs from a direct and positive denial in form.

It differs also in conclusion, for a direct and positive denial must conclude to the contrary, but a technical answer always concludes with a verification. Thus in a plea of acquiescence, replication good and lawful consideration abque hoc that it was it was corruptly agreed (stating the consideration) &c with a verification.

But the Plff is not bound to state the consideration &c but may positively and directly deny, by saying that it was not corruptly agreed &c and then close to the contrary. If he elects the first mode, he must conclude with a verification because of the new matter alledged in stating a good consideration.

9. June
1. Dec 580
4 Dec 677
2 May 75
29 June 1022
1 Dec. 321
20 Dec. 439
March 1164
149

This mode of averring a particular fact by way

It follows that direct result obtains only where
some other answer is given to the residue of what
is alleged on the other side.

It has been a subject of much controversy in
the courts whether a wrong conclusion in these
cases is matter of substance or of form only.

Regardant agent having should concluded to the
country was proper agent because which ought
necessarily to conclude to the country, there is no doubt
with a 'specific' is this a defect in form or in sub-
-stance? In J. Raymond it is said to be a defect in form. 2. Ray 94
In Perkins about same doubt that whether it is a formal 1. Perkins 241
or substantial defect i.e. whether it is of sufficient 1. Perkins 241
or general occurrence. 2. Ray 94

If in a wrong conclusion appears only a defect
in form, we might see no difficulty in following
the question now. I trust there never would have
been any difficulty about it, if the reason of this

Verdicts & Findings

Things have always been understood as a collection
independ. of principles. It is not objected to this
conclusion that enough has not been said i.e.
that he has not disavowed it that is necessary,
but only that he has not said it in a right way,
i.e. that he has not conducted his defence properly.
This is true. But still has he done what is important
in a wrong way, is only a formal defect and is it
as I think only a special defence.

There are two modes of denying an allegation -
1st By a technical traverse. 2. By way of positive
and direct denial. Further, when an allegation
on one side is expressly denied on the other by way
of direct and positive denial, a formal traverse
superadded is needless, unnecessary, and demurrable.
If it be permitted the parties might aver & answer
even in infinitum. E.g. My over performance of a
condition precedent. Yet expressly den is it.
There is a counter issue and interceding a

Heard and Pleadings

74

a burden of performance, with an account is
improper.

To Jeff goes in his dectatⁿ that he has ac-
quired at the age of 21 years (the right of act-
ing then to accrue) Deft pleads that he has not
attained to that age here is a complete issue ten-
dred one a traverse is demurrable. On the other
side he should have concluded directly to the
country.

2 Ma 371
lawes 117
trav 73 5
1 cent 121
1.24 98

Thus far of the general nature of a traverse
with the manner of its conclusion. how to under-
stand when it is necessary, to take a traverse, and
when not is more difficult.

Genl rule, when one party alleges new matter
which is inconsistent with any of the antecedent
allegations on the other side, but which does not
touch on issue, a traverse of those allegations is not
only proper but necessary. C. J. Deft pleads that
J. H. died seized in fee. Jeff replies that he died

Pleadings

seized in tail. This is bad pleading & irregular
 for it was found. We should have pleaded that
 he had seized in tail, & gave her that he did
 seize in fee. So if one pleads that his estate was
 dead at the date of the writ. Puff relates that
 he was alive. Here also a process of his death
 is necessary.

11-1-15
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Law and Equity, 25

25

his belief that J. H. was born in England, that he was born in France, it held the issue insufficient.

It is not an authentication based on Deft's words, nor on a Deft's reply, nor on a Deft's signature, nor on a Deft's handwriting, but does not prove the fact.

and a rule like this seems to be laid down by the court that where that which is affirmatively alleged on one side is inconsistent with what is affirmatively alleged on the other that the latter is in error. Then it is no matter whether there is a direct affirmative, negative or not. This is a deduction from the strict rule of pleading, and this consistency of rules in pleading is unfortunate.

Thus you see that where a party alleges one matter directly inconsistent with the allegations on the other side, a traverse must be interposed, does not hold where the party who alleges one matter

How and Why

inconsistent with the allegations on the other
side, takes the position of plaintiff in his own
case, when he alleges some affirmative matter,
which it is bound to prove, and bound to prove
in the precise manner as laid

Down in a case of debt if Deft calls in
to get off payment, he must plead it specially,
with good words as with particularity, of time
place, name and receiptance by Plff. All this he
must plead and all this he must prove.

again, the rule given to a Judge of Pleas,
the convention is that ~~that~~ the attorney render
an account. Plff. it does not reach, that the Deft
did not render his account. Deft cannot plead
that he has rendered his account although he
did not render it &c. or that he has answered
or not conclude to the contrary. If he takes
the affirmative side of the issue, he must plead
and prove specially & ride upon. This special plea
one always to be followed by an affi

positive says Collet. What does this mean? Is it not

Law 50

that a negative cannot be proved with an affirmative?

Law 121

But when a party merely confesses and admits by one matter what is alleged on the other side, a ~~negative~~ is not necessary nor proper, for what is alleged is not in point of fact inconsistent with what his adversary has alleged. If this was allowed it would amount to a supposition.

There is an action on contract, Doff pleads infancy. Replication because attested age. Now the Plt cannot have the plea of infancy because that was under 21. so he has once admitted it.

again Doff pleads a release of the cause of action. Replication that it was obtained for ransom. He cannot have the fact that there was a ransom, for he has implicitly admitted it by alleging that it was obtained by fraud. But in these cases the

Prop. and Verdict

17th May
18th 221
2nd 169
3rd 168

re. Location or it contains new matter - must be
decided with a verification without a traverse.

When a formal traverse is made with an *absque hoc*
with a verification is tendered the issue is joined
by the opposite party affirming or what is there
averred, and according to the country. Thus Jeff
relates that J. L. did ride up in manner &c
as far as he, one of this he puts himself on the country
for trial.

18th 11
18th 120
18th 149

Affirmative traverse then leads to an issue by the
opposite party affirming or what the special tra-
verse denies.

17th 123
18th 132
18th 141
18th 150

* Latham 'What is meant by it takes note viz.
that an issue joined upon an *absque hoc* might be
have an affirmative after it?

The meaning of the rule is that a negative
cannot be joined with an *absque hoc*. Rules of
practice will not permit it.

The use of *absque hoc* is a strong negation, and

I think then with another object we should be to say that J. F. did abridge in the original that he did not not the right in fact.

Now when the ^{now} summary of pleading it can be made matter of convenience to answer over without an abridge law for the Party is to make abridge and give in answer rather than to make.

It has been a question whether the answer of a witness when sworn is matter of substance or form only? The answer before given I think it matter of form for it ^{is} has been a different side answer to a witness who has not concluded it with a witness. He has abridged sufficient and the other must say to a fact in form.

At the time in hearing the 11th title shows in an induction at a hearing when answer is a relative defense - the plea is to aid. The party is to make a general mode of pleading before stated. But in the Party House in himself

I was corruptly agreed to. I'll reply good and true
full consideration, stating what it was, without this
that it was corruptly agreed to. Both the induc-
ment and the traverse relate to the same point
viz. that there is no money. Now, his incompetency
to the Court to reply, that it was corruptly agreed to
is fatal to him in the traverse, and concludes to
his country.

But a traverse after a traverse is good even
if the first traverse is material.

2d. 114
1st. 114
1st. 114
1st. 114
1st. 114

The distinction between a traverse after a traverse
and a traverse upon a traverse is important &
will be difficult to understand.

A traverse upon a traverse is one which goes
to the same point i.e. to the same precise ground
of claim & defence, as the traverse before made does.

But a traverse after a traverse is one which does
not go to the same precise ground of claim & defence,
i.e. to the same point as embraced by the first
traverse.

E.g. In actions of trespass, if I plead a release

How can I do this?

and however all trespasses after the release even
on the way may be covered by the release.

The defendant is at the time before the
date of the writ - the J. may deny that he
executed the release, or join in the habeas. The
release is the antecedent to the writ. The
habeas covers all trespasses committed after the
date of the ^{the release} release, all trespasses committed
before the date.

If the J. denies the execution of the release,
he has the writ - the writ is antecedent to a habeas.
and this is a habeas after a habeas.

If the J. pleads a plea of assumpsit he must
have a trespass committed antecedent
to the assumpsit. Now the J. may either join
in the habeas or he may deny the fact of a
trespass. If the J. has the assumpsit, he
does not have the ^{the} assumpsit - it is a habeas
after a habeas.

If the J. pleads a plea of assumpsit he must have

all happen committed both before and after, the
licence given.

This is done in order that his plea may be
consistent with the declaration.

But suppose the Deft had no licence. Then if
the Plff is not allowed to have the post of a
licence, he will be kicked out of his right, therefore
he may use this licence. Because it is then
a licence after a licence because it does not
go to the self same point.

Thus far of the distinction between a licence
after a licence, and a licence upon a licence.

But how far and why a licence upon a licence
cannot be allowed remains to be determined.

If a licence on one side goes to the same point
as that of the other why not join? The
law does not allow a multiplicity of pleas in assumpsit.
as would be the case if a licence upon a licence
was allowed.

It is not proper to transfer a new traverse upon
the former traverse, for he may demand if he
chooses.

2^{dly} when in trespass laid to have been com-
mitted in the County of C. in which the action
is brought, the Def^t pleads a local justification
that it was committed in the County of B. with an
allegation that he committed it in the County
of C. Here the Pl^t may abandon the traverse
tendered the material, and tender a traverse
upon the point of justification. This is a tra-
verse upon a traverse, and is allowed to discour-
age foreign pleas or pleas consisting of foreign
matters, which may tend tooust the jurisdiction
of the court in transitory actions. If the Def^t
could not deny the justification he would be
obliged to join in the traverse and then lose
his action, by having the venue ousted.

6th et seq 3 is assault and battery committed

Heard - Monday

In the county of C. B. Pleads that he was a Sheriff, and by virtue of his office arrested the Plaintiff in the county of L'Abeyne hoc that he was guilty of the assault and battery in the county of C.

First rule, that when the matter alleged in the declaration, the cause of action is identified in the plea with that to which the Special matter of justification or excuse applies, and is in its nature divisible so that the Plaintiff is entitled to recover for as much as he can prove the Court cannot make that part of his plea which is in answer to a part of the cause of action, an indictment to a failure of the issue.

2d. It was B on contract in an action in the case for \$1000. B pleads payment of 450 and that the Plaintiff ought to be barred abeyne hoc that he was a good man, and has no other issue. But this he cannot do. This incomplete

but for the Gift, for in this case it is evident
the Gift would be struck out of half his due.

But in the case of benefactors he can do it, i.e.
he bleeds a institution on one day and receives
the benefactors twice to be committed on another.
so he makes that part of his due, which is
to receive a some benefactors an inducement
to a heavier 2^d than the 1st.

In the case of benefactors, next of any one out
of a thousand benefactors with "benefits" the second
But in the case of the other 10,000 the case
of action is white, hence the Gift pleads
that as to all but 830, he never promised and
promised a day, and as to 830 he has paid.

So in order of discharge, My charges the Gift
it obstructing three of his ancient rights Gift
pleads a justly as to two, and concludes with
a heavy "argument" that he obstructed any more.
This is all. For if he could so plead the Gift could
have no damage for two and if Gift could

Unan. Decisions

March 62
March 185
March 185
p. 125

However the other the Pff must join and
must be satisfied. If should please
that as to all but we do not justify and
put blame on the country and bear his
justification of the law.

you must note that the party to whom a law
is made does not by joining in it admit
the same matter. Hedged 'as the inducement,
to be here, for in fact he is obliged to join
in a bargain with himself, and when he
is not obliged to join, if he does join, the
other party can take no advantage of him for
joining.

But if the inducement was advantage to be
admitted, he fairly might always hedge
about matter he thought important in his
inducement and the other being obliged to
join would of course admit it. And if he
admitted it, the system of leading would

Litt. in 1890

Issues and Pleadings

Subject of a general demurrer. That by the
that of course (Topic) the defect is cured and
can be taken advantage of only by special
demurrer. The object of pleading is to bring
the parties to an issue.

Green 187
Case 26
Topic 782
Section 3, 25
Page 44
note

A defence must be taken not only on a mat-
erial point, but also on an issuable point.
Every material point is ~~also~~ not issuable.
But every material point may in evidence be
denied and in that case it is issuable, but
it is not every material point that can be
denied by plea. The allegation may be
of such a form as is not issuable. Eg. In
Assump. My declares that in consideration
whereof &c. He &c. It is assumed and provided.
This is not so pleaded that the consideration
can be traversed.

Matter of law however material can never
be traversed and yet matter of law is often in-
serted in the pleadings - to gen^{ly} matter of

instrument, and also matter of aggravation cannot be traversed for whatever is the gist of the action, unless all matters of aggravation, got in evidence they may both be denied. To traverse the gist of the action is sufficient.

Prob. 2.00
43a-68
81
Lanso 22.8
3rod 3.00

Again Every defence must be taken upon a single point i.e. upon a single ground of claim or defence - focus, but multifarious and double and is, upo a defect in form.

Explicitly vititates any pleading, because it tends to unnecessary prolixity and is therefore inadmissible.

To have more than one point is inadmissible; but this point need not consist of a single fact. Indeed it sometimes happens that the ground of claim or defence may consist of a vast array of facts, either of which may defeat the action:

Thus under a plea of Assault, as

Plur and Pleadings

24th 678
Hott 108

many facts may be set forth as the nature
of the agreement will admit. Now the Plff
may traverse all the facts or one only and
Note there will be but one single ground of
defence.

Yet if the Plff should plead to an action
on contract a release and injury the Plff
ought to demur for duplicity, but he could
not traverse both in his replication.

Again - a ground of defence may consist
of many defenceable facts, by destroying
one of which, the whole defence is destroyed.
Suppose Plff pleads an accord and satisfaction
The must plead both because they both go to
constitute one good defence. Now the Plff can-
not traverse (if he traverses at all) both the
accord and satisfaction, because, if he traverses
one and supports it, he destroys the whole
defence.

24th 326
9th 26
24th 326
24th 326

- If two points are material either may be traversed at the election of the party; but both should not be traversed, unless a denial of both is necessary.

Lane 48
C. 264
11th 335

Another general rule is that nothing except what is alleged can be traversed. For a traverse is a denial on one side of what is affirmed on the other - consequently nothing can be traversed, unless it is alleged or necessarily implied - Thus in a contract it is said that living of virgin is necessarily implied and so may be traversed.

33a 65
75
31
1st 245
624
1st 245
1st 245
1st 245

E.g. taken as action brought on a parcel from which is within the Stat of lands and persons. Plff declares upon this promise without stating whether it is in writing or not, Def cannot plead that the Plff ought to be barred abque nec that it is in writing, because it

Plead and Pleadings

is not alleged in the declaration to be in writing. He should plead his defence specifically and conclude with a verification.

Exception or qualification to the last rule. Thus suppose a bond is given conditioned to pay money at or before a certain day. Defendant's payment before the day and if still unpaid before the day, his bond should be, not paid before, at or after the day, and yet this is traversing what is not alleged.

Hence is a rule (I think the Court find it in the books) that when traversing only what is alleged, may leave the issue immaterial. Then it is competent and proper for the other party to make his traverse broader than the allegations i.e. traverse what is not alleged so that it may lead to a material issue.

2 Br. 964

1 Wils 173

A banner of what is not alleged is the
 Special demand only is in point of form. It
 is bad only in form, because the party pleads
 by way of traverse, what he ought to plead by
 way of special matter. The only objection is the
 material matter was pleaded informally.

2 Inst. 4935
 1860
 2d Ray 338

And say material fact. a hearing in the
 pleadings, either of inducement or of suggestion,
 may be traversed - as a general matter of in-
 ducement cannot be traversed and the cases
 in which it can be traversed are rare, and the
 reason is, because matter of inducement is sel-
 dom material, yet it may be material and
 may be traversed. Thus when the Jfy is asked
 of Hander declares that "whereas he took an
 oath before the Mayor of London, and the Jfy
 said you are perjured" Here is an inducement,
 but is the inducement which gives the Jfy

Year and Month

Case 114
June 19.

his right of action, and so last said it might
be traversed.

I have before observed that every plea
must cover the whole declaration, gravamen
or cause of action - hence it follows that
when a party justifies or confesses and avoids
as to a part only of the material allegations
on the other side, his traverse must be coextensive
with the residue or with the part not thus
avoided.

E.g. In trespass, if Deft pleads a release, he
must traverse that he is guilty since the re-
lease and before the date of the writ. The
release extends only to trespasses committed
before the date of the release.

Now his traverse must be coextensive with
the part not avoided by the release, and
that part is all trespass committed since
the release, and before the date of the writ.

Case 104
Esp. 415
Talk 222
Case 57

So if in treppap, Deft should plead a confession, as that justifies only for all treppap since, he must traverse all treppap antecedent to the confession in order to cover the whole grievance.

So if Deft pleads a licence at a particular time, he must traverse all treppap committed both before and after date. The more proper way is to plead the general issue as to the fact not avowed.

and 243
- 294
2nd 68
on 108

If the Deft pleads a justification at a particular time or day, he must traverse his liability at any other time.

There is an exception to this rule viz. where the justification is laid on the same day on which the treppap is alleged to have been committed; the day being agreed upon by the parties - & the treppap justified, and the treppap complained of, are identified in the plea, and so

Verdict and Pleadings

no need of a traverse. It is *prima facie* a good plea, and cures the whole gravamen without any additional traverse.

But further, the *Off* has laid the trespass on a wrong day, for he may have deft made a return on that day, and the *Off* has really sued for a trespass committed on another day, and which Deft has really committed on another day; or in other words, suppose the trespass is laid to have been committed on a day certain and diverse other days, it seems that the justification on the day certain is sufficient. Now the *Off* must in his return too make a *verdict* against morning. The objection viz. that the trespasses for which he actually sues and complains were committed on each a day.

1781. 130

1 Bait. 108

2 Bait. 50

Slid 42

Slid 56

Slid 17

4 Dec 125

381 311

Returning before and after the day on which

The justification is laid (at present) is not necessary
it seems, if the Left agree that the acts which
he justifies are the same as those complained of.

This is the common practice in Court. As if in
suspects a licence on a particular day should be
blest. At some time he must however get antea-
cedent and subsequent trespasses. But by the rules
of our practice he is not required to do this, if
he will agree in writing that the trespasses con-
tained of and justified are one and the same;
and according to the latest authorities, this
practice is now followed of in the East courts,
altho' there are different opinions in the books.

Walt 138
alk 64
Coul 161
Fen 274
Hume 14
2 do 5 a b
Coul
16 vol. 194
2 do 66 578
3 do 267

But to those the trespass which is justified
and that complained of are not in fact the same;
then the Left is to agree that they are not the
same. He is to deny the allegation and show
that the parties to a broken bone.

Pleas and Pleadings

There has been much speculation with regard to the proper office of an inducement or without procuring an inducement. It is said that it is entirely nugatory, as a person well understood obliges the opposite party to join, if the inducement had however gone to the same point as they at least always does, of what use in general is the inducement? * Why does he not neglect it once without introducing an inducement with an objection?

In the first place an inducement when used by way of protestation answers a very proper & necessary purpose as has been before explained. * Why then of course, that it was corruptly agreed & satisfaction - good and lawful consideration - "anyhow bad" that it was corruptly agreed & to join in it was corruptly & so what happens does the inducement answer? In most cases, it

and the other person than the usher in the
 house, when a denial direct would be suffi-
 cient, and the barrow is only a conclusion from
 it. says, "I have seized in bail 'abique hoc' that
 I would seize in fact; I have also 'abique hoc' that
 he is least - that is, when."

2. When the inducement and the barrow go
 to different points or grounds of defence,
 the inducement is a necessary part of the defence.
 In the defence is incomplete without it. by the
 action as to one day with a barrow of all other
 days before and after. Here the inducement is
 a necessary part of the defence.

3. The great use of a barrow is to prevent a neg-
 ative argument. Mr. Lush says, a special bar-
 row without an inducement is a negative argu-
 ment. This is many times true. Whether the
 barrow will or will not amount to a negative

Verdict and Pleadings

113

There can be no negative averment, and an inducement on that account may not be necessary - as when Bell pleads that his debt is dead, & off, replies that he is not dead. This can be no implication - as this benefit is not experienced.

verdict 113

Another rule of pleading is that a traverse must consist of issuable matter. So also the inducement to a traverse must consist of issuable matter. The rule is founded on this ground that an inducement to a traverse is generally necessary, and so it must be pertinent and proper - and it cannot be pertinent unless it consists of issuable matter. For the traverse must be on an issuable point and the traverse is only a conclusion drawn from the matter of fact specially stated in the inducement - the inducement must consist of issuable matter. So in the case of a traverse after a traverse

Plaint and Readings

Argument appears as the particularity of the
implication in of the allegations concerned.

Now suppose that a plea of treaty is made
saying that 10 per cent was reserved off after
without an instrument that saying that 10
percent was not reserved. They raise the case
open to an inhibition that if the plea was reserved
to an instrument as well as to prevent
the implication.

Now the 10th clause says that the contract was
in good and lawful consideration alleged but
that it was lawfully agreed so that he
ought not to be bound alleged but that he re-
served 10 percent. Now the instrument prevents
the negative argument.

But in some cases the law would not
amount to a negative argument at all i.e.
where the allegations are simple so that a denial
of it in its terms will lead to no implication

On the subject of

2010-58
2010-59
3/2

is only the special attendance in the same
negative dependent to a only - Special
attendance - It is all in form only.

Of Duplicity.

This a fault in the proceedings, and it is not
true the former in suit to be that it is not
a fault in the proceedings, least.

A double plea is one consisting of several
distinct and independent allegations
to the same point and requiring different answers.
By the same point is here meant the same
ground of claim in defence.

2010-58
2010-59
2010-60
2010-61
2010-62
2010-63
2010-64
2010-65

To offer an infant answer to a claim of infancy
and plead as a defence to the same claim. This
would be duplicity. To then would require

And must then be large

92

Law 187.

187.3

different answers

And giving different answers to different parts
of the facts or plea that constitute publicity.
For one part may be true and another false and
insufficient and the other insufficient in law. One
may be demurred to, and the other avoided by
new matter. Some of each extend to the whole.

Law 187.

187.3

118

119

In some cases it may be said you'll give to
one part - a special plea to another, in a demurrer
to a third.

Law 187.

187.3

118

119

In about some cases if there are several Defs.
each may plead a single matter to the whole, or
various answers to different parts, precisely as if he
had been sued alone. If the rule were otherwise
they would be at the mercy of each other.

Law 187.

187.3

118

119

118

119

118

119

Plan and Planning

Definitely is considered a fault because it tends to cause abrupt, hostility - to confusion by following different methods - and to variation within each one based in a great measure on - coming to the light of the record.

Dec 14

Dec 15

Dec 16

Dec 17

Indeed one defence of this good one answers the same question as one hundred.

This will however sometimes leads to incoherence - for it is often difficult to choose the best out of a number of defences.

Dec 14

Dec 15

Dec 16

Dec 17

Very few must be right, justice, corrected, as a result of a single point in a single piece of action or defence.

Dec 14

The best use of reason is rather didactic than impressive - for the person is not convinced in that manner - by which one is inclined to a single point is not and "single".

That a defense may consist of more than one fact, for a number of facts are often necessary to establish a single ground of action or defense. These facts however must not go to different grounds of action or defense. An instance is where - to prove an act of battery - the plaintiff is required to prove all the facts which compose it, so if an answer is pleaded, a great number of facts must be mentioned.

even 326
facts

That distinct counts in one declaration to establish one or several rights of recovery do not amount to duplicity - so long as the respective counts are double in different parts of one count require different answers this is a fault.

The object of inserting several counts in one declaration is that the evidence may at any time prove one of the causes of action. Indeed on the face of the declaration the causes of action in the different counts are themselves different. But

How and Why

144.995

They are to get their share - so it is common out
of a thousand children to buy a gun or two, and that
in the forest, and a gun or two more in addition.

144.995
144.995
144.995
144.995
144.995

Such things are constitutive of life. So if
there are two of them of defence and one of them
of offence and not of defence - this is not duplicity.
It is of the nature of the insufficient as a whole
idea, but not by deed - this is of the nature
of the insufficient.

Of Duplication in the Education

It consists in joining a number of actions
which cannot be joined, to enforce one right of
money. It is not a deed but it is a deed arising
in contract or in deed. There is a distinct and
unmistakable ground of the deed and deed to en-
force one right of money.

So if I should declare in contract
and deed that I had a contract with a third

known to be a bad off, and for this reason the more
 that not been heard this would be extremely for the public
 both would be intended to improve the right of recovery

Is a debt on land, the improvement in the rep-
 lication of more than one breach is the policy
 at common law. It is not necessary for one
 breach of a fence to work a total forfeiture
 of the property.

23d 195
 2d 267
 13th 112
 18th 397
 18th 36

That by 17th's law provided that in actions
 on freehold lands. If there were only that is equi-
 tally due. It is necessary to assign all
 the breaches - for he will recover only for the damages
 incurred by the breaches assigned.

This that is extended by construction of the words
 to all breaches.

But in actions of trespass broken. If may
 assign as many breaches as he pleases, this he
 might always be at variance. Indeed they not

Loss and Damages

18 Mac 1894

18 Dec 1897

18 Dec 1898

every thing but what is assigned. The action is
therefore brought to recover the actual dam-
ages.

In law the action in debt or bond is the same
as the tort one as to all the relevant facts.

18 Dec 1897

It is more a recovery than the actual damages
sustained - This is by an equitable construction
of one of the Stat's.

But by Stat 485 of other "all may with leave
of the court plead as many defences to one
action as he pleases and this leave of the court
is granted of course.

Like such distinct defences are alleged in dis-
tinct barabos pleas.

18 Dec 1898

18 Dec 1898

This Stat was inserted to remove the embar-
rassment which often occurred in 'listing' the
'list out' of several defences.

We have no such Stat in practice and indeed
there is not the same reason for under the general

The party is bound to make perfect that the adverse party may have eye of it and a copy of it if he pleases. To have eye of an instrument is to have it read.

5 Jan. 119
Lanc. 96
4. 8. 109
- 13
Est. 238
£ 6. 35
10. 4. 93

Without eye, a man is not paying the adverse party is not bound to be bound. But if he does in waiver it, he can't demand eye afterwards.

6 Mar. 25. 8
3. 11. 114
4. 11. 113

The Eng^d is not necessary to make perfect of a promissory note in a bill of exchange. For they are only evidence of a promise the promise is declared in, but not the note.

(Hobbs, 185
Bui. 24.)

But in least promissory notes are deeds, and so are all unsealed writings and are so to be treated. To perfect may be made, or at any rate eye is demandable.

Yet is it not necessary to bind unsealed instruments, unless they are contracts.

In the year promissory notes are made

Plaint and Pleading

to be by pleading a deed.

If now one is right assigned by deed with
fact without deed the party claiming is not
obliged to plead the deed and of course pre-
-sent is unnecessary. In his attempt to make
proof of what is not, he loses.

To a party in possession of a house by
fact is good. To it is by deed still it need
not be pleaded.

To no tenant is necessary. no not owner
but he must be made by contract and to assign
without deed.

July 11/9
Feb 14/9
Mar 15/9
- 200 1/2
200 1/4

But if it is not fact only by deed then
the deed must be pleaded, and protest made.
To make evidence of what is not must be
pleaded and protest made.

Feb 15 - 2
July 1/94
30 1/4 1/2
Feb 15/95

To a person in possession by deed. To want a release.

But for the right would not without deed title
 of deed is intended and title made under it, then
 fact must be made.

But if deed is intended, yet if it is not made
 title made it he is not bound to make proof of it.

So if his mere matter of inducement proper
 need not be made. I don't go to the gist of the ac-
 tion can't be traversed in not a reply in order
 to entitle the other party to make an appropriate
 defence for the defence must be an answer to the title
 or answer in case of action.

to charge to a deed may plead it without ^{making} pre-
 sent, the reason is, it is not necessary in his power to do
 it. For many seditious compel the other party to
 bring it into court by a writ, however it is true.

Vol 33
 1. 110 149
 1. 110 149
 1. 110 149
 1. 110 149
 1. 110 149
 1. 110 149
 1. 110 149

I had a tenant who requires title by operation of
 law from another who claimed title by deed, and
 not make perfect - Thus a tenant in dower - she

Readings and Plans

1 Wood 225
2 L 75
3 L 200

need not be the greatest, for she is not supposed
to have it in her power.

But to the point into last laid down there
is an exception in case of L. A. by making for
him is allowed to have possession of his wife's deede
and may retain them during his life. Whereas
she is not supposed to have her husband's deede
they are in the hands of the wife.

Dec 40
1244 18
212283
214.226a
12 1274
2 Root 482
4 300.110

A record may be cleared without making
any part in records as kept in some places and
not allowed to be carried from place to place.

22 47.5
27. 1.151

But to say that where the record is in the
native court where the name is it is necessary to
point out the number of the roll so that the ap-
propriate judge may locate it. But the record
is not in his power.

22 225
22 222
22 227

But previous to the person to whom the deede is
made must send a deed with packet when it
could be necessary for the party having it to.

make a bequest to an heir at law, making
little under his father's deed must make protest of it.

To a tenant ^{in fee} tenant must make protest of a deed
to remainder man for it belongs to both - both
are parties to it. Question as to the extent of this
rule.

2d 387
317
1862/11

But in case of a tenant the rule is to an heir
at law, eldest son, for here the real estate des-
cends to all the children - Whereas in England it goes
to the eldest son, and so does the deed, but here
one has as much right to the deed as another.

Indeed I doubt whether it is necessary for one of sev-
eral heirs to produce it in evidence. In last paper
said not to be made at all in case of.

Yet if a deed is lost by time and accident, or
destroyed by casualty, or by fire it may be proved
without protest. So also if the deed is in the pos-
session of the adverse party, tho it belongs to the
other.

Yours and the other

Yet the reasons for admitting the fact in these cases
must be stated in the pleadings specially. Other-
wise they will be deemed immaterial.

5 to 74⁴
75⁰

12th 16.

12th 16.

12th 16.

12th 16.

12th 16.

12th 16.

12th 16.

12th 16.

If in these cases he pleads with respect he will
be concluded by it. He can't contradict it in
evidence. The facts must be stated which go to
the point with the fact.

12th 16.

15.5¹⁰

12th 16.

12th 16.

12th 16.

If however in fact can be made proper
the opposite party has a right to say. To be
said proved at all yet the plea may be amen-
ded.

12th 16.

12th 16.

12th 16.

When the deed is only the instrument to the
action and of course title is not made under it,
fact not need not be made - I. deed is not within
the rule requiring proof.

But it has long been settled in law that the
fact is not necessary. But yes is demonstrable
without it.

In cases in which in Eng. proof is

Planned Plots and etc.

91

any copy of the original is in Court records, without

March 1890

At New York the copies of the original were
- but was necessary to make a copy of the original and
not aided by exhibit. But now by the fact that the
- and the original are the great bulk of the
- but it is not to be made a matter of form, and
- can be taken advantage of only by the fact that
- however: To be made by the fact that the original
- by exhibit.

22397.

1890. 92

67. 35

67. 37

67. 37

67. 37

67. 37

67. 37

67. 37

But if deed is lost or destroyed and the deed
without prospect, a copy seems to be a good
evidence of its contents will be admissible. But it must
first be made to appear before the court that
the deed is lost. Then otherwise a copy by a notary
& a notary is not always the best evidence of
the deed itself out of the way.

In many cases satisfactory evidence of the deed is

then not that they

unavailable.

12th 1851

K 146

12th 1851

is his duty only to make it a *prima facie* case.

The same evidence (at Sophia) is admitted where the deed is in the hands of the adverse party & notice being given him first to produce it or otherwise a copy of it is not admitted.

If however the party can produce its contents the court will compel him to produce it.

12th 1851

K 146

12th 1851

This may be done by petition in Chancery.

But if the party can prove it by other evidence he may.

12th 1851

K 146

12th 1851

Then if it is made the adverse party may have a copy of it made & demand to have it read.

12th 1851

K 146

Under the Act it would be entitled to a copy of it to be made at his expense.

12th 1851

K 146

But again is not demandable of a record, where a party is not a party to it. Still he can control it, & this is known to the court.

Placental Reading

1780

In the event of a deed where not necessary
age is not demandable.

Monthly the effect of returning age is to enable
the parties to plead a counter what is alleged
on the other side.

But if little is not made under it then he
is not bound to answer - it is mere surplusage. Lanc 29
Talk 497
Lanc 390
Lanc 410.7
Lanc 41

Spending age when not necessary does no in-
jury. But refusing age by the where a party
has a right to it is error. he is deprived of Lanc 39
Talk 498
Lanc 496
his defence.

When age is inserted, the party demanding
it may enter in a plea and objection on the re-
cord, and take advantage of any thing omitted
by the party who pleaded it - or of any thing
which appears on the face of the record.

If there was a condition the performance
of which was to save the husband at a bond,
he may plead his defence.

How and Why

But if
the
instrument
is
different
from
the
one
on
the
records.

But generally the rule that is necessary is to
plead it on the record and then demur, for
there is a variance if the instrument recited
upon is different from the one on the records.

But if
the
instrument
is
different
from
the
one
on
the
records.

It is a general rule that if the instrument
is insufficient in law to support the action or
defense, or if on the face of it, is illegal it
may be pleaded on the record and then demurred
to. But if not insufficient or illegal on the
face of it, the fact must be made out by aver-
ment, it can't be demurred to.

So if not on face of bond, and if it appears
from the condition that it was given for ille-
gal consideration - here lies bad on the face
of it - so it may be demurred to.

But if the true consideration is not ex-
plained then the party can't demur, but
must show the illegality by averment.

107 2370
 Book 101
 3 B. L. 234
 100 98.9
 100 28

Case 100
Launder 9.⁶
316.17
47. R 370
Case 123 11

Law and Equity

Rev. 8. 2
 Feb. 1792
 Nov. 18. 1794
 Nov. 74
 12. 3

1849
 18. Dec. 12. 8
 12. 2

31. 3. 1850
 18. 1. 1851
 23. 4. 1851

31. 6. 310
 Nov. 74
 18. 1. 1851
 18. 1. 1851
 18. 1. 1851
 18. 1. 1851

It is of course, should justify all in the
 matter. So the replication should justify.
 The defendant and the replication the first.

So of defendant in the second in bar and in
 rejoinder he alleges a gift in fact, this is departure
 for the latter is not in the middle estate nor is it
 by defendant. So of defendant's infancy Repli-
 cation necessary - Defendant release his claim
 - here.

So in actions of covenants broken Defendant alleges
 performance of condition precedent - Plea non-
 performance - Repl't Defendant ready to perform
 and Defendant refused to let him. This is departure.

But if one party alleges a fact and the
 other party answers that it was repeated, a
 Repl't that it has been received is not a de-
 fect - for this justifies the first ground.

But where the cause of action is alleged gener-
 ally and Defendant pleads evasively - a more

4. 3. 1851
 18. 1. 1851
 18. 1. 1851
 18. 1. 1851
 18. 1. 1851
 18. 1. 1851

particular statement by way of non-avowal
a signment is not a departure.

So if in action of treppap Ioff jus-
tifies one treppap on a certain day, and avers
that his name as in the declaration - how Ioff
may reply, mentioning a treppap on a different
day or a different treppap on another part of
the same day, with more particularity, and
avering it to be different from the one justified.

To be sure a novel assignment may be so con-
-strued as to cause a departure - Ioff may
reply by a sign with or without taking issue on
the plea.

Arg 523
Laws 240
Gleb 20
1. Sind 28.
Ch. P. 17
Laws 164.5
3 B. G. 311

Departure is a substantial fault and reached
by general demurrer. Now in one vol. of Saunders
only it is reached only by special demurrer -
But in a subsequent volume he corrects that
mistake.

Close and Pleadings

12th 221.2
 14th 1722
 15th 222
 16th 94
 17th 2111
 18th 94

that this defect is avoided by verdict if enough
 appears on the record to entitle to jury.

of Pleas

This is said to be an irregular collection
 in of the pleadings to lawes. It is in
 fact not a plea but an excuse for not
 pleading. I say it is not a plea, for it is clearly
 neither a dilatory plea nor a plea to the
 action. But these words bind all legal
 men.

12th 221.2
 13th 221.2
 14th 221.2
 15th 221.2
 16th 221.2
 17th 221.2
 18th 221.2

It demands a stronger & legal proposition viz.
 that the pleadings on the other side are not
 sufficient in law, and therefore he says he is not
 bound to make answer to it. He admits each
 matter of fact alleged on the other side as a
 well pleaded, but denies their sufficiency in law.

12th 221.2
 13th 221.2
 14th 221.2
 15th 221.2
 16th 221.2
 17th 221.2
 18th 221.2

and that it refers the question of law arising there immediately to the Court.

4 Bar. 129
1 Bar. 71

The legal proposition advanced in support of the legal proposition alleged on the other side, directly & simplidly.

It however may be taken to any of the pleadings in the allegations on the other side in any stage of the pleadings.

4 Bar. 129
6 Bar. 72
3 Bar. 132

It however admits no other facts than what are well pleaded. So if in act of covenant broken off against some teachers with and some with and left down to the whole state of the with have given to our own teachers that are well figured.

2 Bar. 218
1 Bar. 245
3 Bar. 139
Law. 17.9
1 Bar. 12.
2 Bar. 214
3 Bar. 175
3 Bar. 161
5 Bar. 154
2 Bar. 154
4 Bar. 153

It however now confuses any account that contradicts what before advanced certain on the record. Instead allegations that are contrary to what appears on the pleading is

Harriet Stoddings

100 124
exh. 35
75
Jan 169.
Drill a name of demerit. As if he plead
a record and then contradicted what is con-
-tained therein. A demerit does not say
those facts he had no right to allege them.

On the same principles a demerit never
confesses an occurrence of what is impossible
and appears so on the face of the record.

So in case of Aplevin for taking horses in
the county of A. If it is afterwards alleged
to have taken place in the county of B - the
demerit does not confess this to be true, for
it is impossible that the county of A should
be within the county of B.

100 10
cont. 35
10.

It demerit does not admit facts which do
appear on the record to be impossible of legal
proof. It is incompetent for a party to aver
that which cannot be proved.

200 35
60 44

So if one pleads a retrial by a demerit

Was not reading

184

don't confess it - for a release must be proved
by waiting.

Jan 7, 1844

Jan 18, 1844

Feb 19, 1844

But does it confess allegations which are not
material nor favorable.

Feb 5, 1844

Such allegations can't be deemed in any
form. But a party answering ought not to
be liable to confess what he can't prove. Feb 5, 1844
or thus he would be obliged to confess facts Jan 18, 1844
whether he would or not.

Demurres never admits the truth of misper- Jan 18, 1844
son or immaterial assertions. These can't Feb 5, 1844
be denied.

It never admits mere conclusions of law
made by the adverse party from the facts stated.

Such are deemed to - not matter of law. Feb 5, 1844
As if it is a plea of justification, the conclusion Jan 18, 1844
is "verdict is here limit" a demurmer don't confess Feb 19, 1844

Verdict and Pleading

For conclusion.

After an issue in fact joined, a demurrer
cannot be taken. It must be while the pleadings
are then before issue joined. For this prevents
any further pleading or demurrer.

Comp. Pla.
2. 6
1 Rev. 2. 3

an issue joined closes the pleadings.

A demurrer is generally called an issue in
law, but this is not strictly correct. It rather
closes an issue in law. The issue not being
closed till the party demurred upon joins
in demurrer.

3 B. & A. 113
114. 115
1 Inst. 26.
4 B. & C. 129
54
Lewin, 1. 3

If there is a demurrer and an issue in
fact, in the same case as there may be the
demurrer is regularly tried first, for this the
jury can assess all the damages at once, both
on the breach demurred to and on that which
is traversed. If it were otherwise then a
verdict de novo would have to be awarded
in order to assess damages on the fact demurred

1 Inst. 22.
115
5 Inst. 130

to. Still his discretionary with the court to
by the issue of law, first or last. Palme 177
4 Ba 130

If where one part is demurred to and one
part answered, Demurrer is overruled ~~off~~ may
enter a nolle prosequi as to the issue of fact,
and have damages abated on the other part
only. ~~by~~ Several benches assigned in ^{last} Jalk 219
some demurred to, and some answered this Sha 574
is matter of convenience, where he thinks 1 Inst 72a
he shall fail on the issue of fact. He enters 4 Ba 130
on the record that as to the part answered
he will no farther prosecute, and this stops
the proceedings of course.

It is a rule that there can't be a de-
murrer to a demurrer - This works a discon-
tinuance.

et Demurrer don't allege new matter
of fact. It refers to matter already alleged. 4 Inst 131
2 Inst 20
1 Inst 118
Jalk 172
Jalk 219

Was not pleading

In said in Contra that the ² where a plea
in abatement is not a plea and it is
demurred to there may be a demurrer to
a demurrer. I don't understand this.

Cont 906
authorities
as infra.

Quere Was is an affirmative plea in abate.¹
The truth is the same in all cases. The only question
of law which can be raised.

Cont 906

It follows that in all cases arrest at law,
when one party demurs, the other must win.

In Contra the demurrer to the declaration
is thus "I say that the declaration and the matters
therein contained are insufficient in law and heard
to judge judgment" the answer is "that the ¹ ²
say this declaration" and the matters therein con-
tained are sufficient in law and heard to
judge judgment.

In Arg the form is longer. Thus "and the
above ¹ ² with that the plea affirmed by him the

But in this case, and from the facts, above
in his behalf pleaded, and the matters in the
same contained are in law sufficient to law
to the said Charles to maintain his action of
assault against him the said Wm. to which he
will not be compelled, neither is he obliged by
the law of the land in any manner to answer,
but he is ready to reply.

But in this case, it is not necessary to conclude
with a confession, nothing here being alleged
in the denance.

Law 172
1. Rem. 24
2. Act 172
C. 11
C. 11
3. Act 172
79
Law 172, 4

As to the effect of denance

In civil cases judgment in denance may be
voluntary, or compulsory, i.e. final or in chief,
or pleading over.

1. Act 172
2. Act 172
3. Act 172

But in criminal cases, that of pleading the not guilty
is the same, for pleading over after denance over and
in these cases.

1. Act 172
2. Act 172
3. Act 172

Plur and Findings

4 R.C. 334
2 Bank. 334
1 H.C. 234
257
215

But in proceedings for libel, a rational officer
the better opinion is that after demurrer overruled
the prisoner may plead over.

If a 'Sop' demurs to 'doctors' and concludes
in abatement, till the off may join in law &
have judgment in chief.

This concluding in abatement does make
a demurrer a plea in abatement. Thus if he
demurs and concludes praying judgment that the writ
may be granted.

Lancet 178
1 Lev. 213

There are two kinds of demurrers viz.
General and Special.

A general demurrer affects no particular cause.
A special demurrer is one which points out
precisely the particular defect on which the
demurrer is founded. So if Sop says that doctor
is insufficient in law and wants more, tis the
great demurrer.

But if for cause he says, he specially alleges
that the other party has not laid the case in
which the injury was committed - is special. 1840 194
1841 191
1842 197

It is said by Cases that special demurrers
were introduced by Stat 24 Ed 3. This is incorrect
for they were known before that time. That Stat.
only makes special demurrers necessary in certain
cases, in which they were not so at common law.

So it makes them necessary in all cases at
common law. 1843 182

But to conclude a special demurrer is
not sufficient that the cause be assigned is
with particularity.

So if the cause is generally assigned is still
general.

Thus if he says "and for cause he specially
alleges that he uncertain and wants for". It
is still a general demurrer. He ought in order to
make it special to mention that he uncertain

1845 24
1846 212
1847 294
2 Aug 1845

Plea, no 1 Pleading

General no person laid, or in certain time laid
or in certain quantity laid.

All denunciations were continually specific, they were
spurred by facts which lived in the time of writing
when the Stat above, was enacted. Lake says
that his a good rule to make denunciations specific
in all cases instances. He means that his is a
safe manner of pleading.

It is liberal for it gives the other party notice
of the character cause of denunciation.

2 Aug 1847
1 Sept 1848

It is safe also for it sometimes difficult to
determine whether the defect is matter of form
or substance.

A specific reaches all defects which a general
one does, and others which a general denunciation
does not.

As a general rule that all substantial defects
in material ones are reached as well by general

democratic as special demerit. But debate in favor
can be attacked only by the same demerit, under
the Stat. 27 & 612.

If then one demerit specially affecting one
social cause, he may take advantage of a
defect in substance, tho that is not specially
pointed out.

16th 38
Litch 180
Holt 127
Pra. 621
3, 3, 10, 3, 15

This rule of 27 & 612, is observed I believe in
all the States. Our courts have adopted the
reason of the Stat. as our law.

In said 27 & 612 the necessity of pleading
specially is extended farther than by Stat. 612.
The latter excepted generally that defect in form
must be attacked by special demerit.

The former extends the rule to certain
secular cases, supposed not to be within the
Stat. So it extends the necessity of pleading
specially.

4 Bac 189
14. 8

On and Readings

In all pleadings, two things are necessary, that
the matter alleged be sufficient. 2. That it be
alleged according to the forms of law.

The second in relation of these requires a good
reason of necessity.

The condition of the former is cause of general
denial. The condition of the latter is cause of
partial denial.

But what is a total denial and what a partial
denial? as under our system, they admit
only of general denials being in their nature
abstract. The most definite one that has been
known is the following.

The condition of that without which the
very right does not judicially appear is defect
in substance. ~~But the condition of that~~ But the
condition of that, without which the very right
does not judicially appear is that right
is not alleged according to the forms of law,
or defect in form only.

Page 232
- 100
June 7, 185
Wed 17
Nov 5, 18
Reading 7/2
S-2

The objection is that the right is not alleged
or deduced according to the forms of law.

Vol. 292

Thus if the ²⁴ will to see the performance
of a condition precedent this is matter of substance,
for the right can only to accrue, on performance
of the condition. So the just the very right does
not appear.

So if it is to pay B on condition that he
perform a certain piece of work, and in default
he takes the condition without seeing perform-
ance.

So if the tenant is mortgaged - he a defect in
title. So in order to subject at common law
the debt must know that his dog is ^{addicted} accustomed
to kill sheep - one that has indeed owned the
pale and asserted that the owner of a dog shall
be answerable for all the mischief he does.

But on the other hand, in action of debt, ^{or} ^{or} ^{or}
if the place where is committed this is matter of
form only - is not material where committed,

Pleas and Pleadings

In a non-est pleading, the right appears
but the essential terms of law require that it
must be tried.

Again if the declaration is defective as a defect
in form. Is it correct and not accepted in
the same declaration - this is a defect in form,
for the contract was enough. There is too much
substance. The right of recovery appears in this
case - but the declaration is bad in point of form.

So if Duff pleads liability what amounts to the
fact above - this is defect in form. His defence
appears but the term of allegation is deficient.

From what I have said it results that where
there is a total want of substance as where one
pleads another to not treating him really so
where a material allegation is omitted a general
verdict is proper i.e. will answer.

So in cases if Pff don't state precisely
or in fact state that he was in possession

Plaintiff's Plea

To defend the plaintiff in the first action for the same cause afterwards to sustain the same grounds as are disclosed in the first declaration.

But when the plaintiff fails for want of an essential allegation - he may decline in another action: the same cause, inserting that allegation.

The second action then stands on one more ground than those disclosed in the first declaration.

It is true indeed that no one has a right to have the legal merits of his cause tried twice. But here in the first case the legal merits were not decided. The grounds disclosed are different.

To a third plaintiff misconceives his action he may bring another action for the same cause - for the actions are not similar and concurrent. Even if the plaintiff brings a second action, he is the proper action.

910.6 250
- 300
69.6 5
23.2 75
828
100.6 667.5
1.68 119

1010.6 250
- 300
69.6 5
23.2 75
828
100.6 667.5
1.68 119

The same will generally if left bail in the court. 28th Aug
 1881
 427

The legal judgment for plaintiff in one action
 is not to be another to be the same right not
 simultaneous concurrent. In court we have but
 one real action - "Johnson"

But the decretum is sufficient there mistake
 in the pleadings yet if Deft takes no advantage
 of such defect, but pleads something in bar and
 issue is taken and the very right is found for
 Deft. Plaintiff shall have no other action for same
 cause - since the merits have been tried

So if in answer demand and refusal are
 stated but not concession and Deft instead of
 answering pleads release and issue is taken
 and decided for Deft yet he shall have
 another action. He cannot say that the legal
 merits have not been determined. 28th Aug
 1881
 428

The Court's Readings

It however does not always extend to the whole of
the proceedings on the other side, and a part is
considered in favor of the one side. Then the court
do not cooperate with the first side, then
sometimes, particularly the other.

Nov 2. 1860
p. 100
Vol. 10
Lancaster, N.

I remember to say that there the whole is said
not to be but on the first substantial defect
in the proceedings - that the first defect is a
substantial one.

The court must give judgment on the whole
record.

So if declaration is ill and taken in law, they
may if they choose to the plea in law, judge will
be for the plea, and that plea is good enough for a
verdict and judgment.

So if declaration is good, taken in law, right at
law, they will give judgment in law for
the plea, and that plea is good enough for a
verdict and judgment.

Nov 2. 1860
p. 100
Vol. 10
Lancaster, N.

They do however attach to the first

substantial defect for defects in form are waived by pleading over.

18 Mar. 31.7
18 Apr. 2.77
18 Apr. 13.3
18 Apr. 4
18 Apr.

But there is a stage of objection to this rule.

The defect is found for the defendant was placed at one of an award, if left, pleads an insufficient plea is insufficient in substance and off in his replication a higher sufficient to reach how if left shows the facts have judged the the declaration is good and the the first substantial defect was in the plea is first in order of time.

The reason is that in this action the cause of action is before the replication which is here a sort of independent to the declaration. The replication is essential to form the cause of action. He takes advantage of condition of the bond a declaration.

31.5.77
18 Apr.
18 Apr. 16.3
18 Apr. 3.7
18 Apr.
18 Apr. 20.7
18 Apr. 21.7

But this puts the condition on the record by way of defence and thus the court see the whole contents of cause the true cause of action is to come out first all in the Replication.

Blair and MacLean

of Demurrer to Evidence.

The demurring to evidence is a proceeding of much rarity and is yet rational.

The law cases where a plea terminates in an issue of fact - one party may take the examination of the case from the jury to the court, by demurring to the evidence, or upon it. In any case indeed where the situation of the case is such as to render the proceedings proper this demurrer may be taken.

It must be taken before the party demurring withdraws his evidence - for his object is to request the court to weigh the different evidence and see whether one is sufficient to rebut all as the other.

1804 4046
1805 70
1806 70
1807 30
1808 30
1809 15

The relevancy of evidence is always a matter of law to be determined by the court. Its relevancy being established the question how

for it remains to establish the point in issue, is
left to the jury to determine.

The relevancy of evidence is meant its
pertinency, or its applicability to the issue. That
evidence in any degree is pertinent the jury is
to determine. It is a maxim that in a trial of law
is to be determined by the court, and matter
of fact by the jury.

2 Wms 360
2 Wms 225

If therefore an issue be proper to demand the
evidence which is clearly relevant to the whole
issue, however weak it may be, and evidence
is always relevant when it contains in any degree
to prove the issue.

2 Wms 320
2 Wms 260

The demand puts an end to the question of
facts, and the jury is no more concerned with the
case. Demand refers to the court the application
of the law to the fact shown in evidence.

1 Wms 38
2 Wms 384
2 Wms 251, 2

This demand then admits the facts shown in
evidence by the adverse party and like all

Plur and Standings

2 Jan. 1861
12:42
27. 81905.6

The Democratic Series their total operation is
favor of him who exists to them in their suffi-
ciency to fulfill his duty.

The fact then must be first ascertained. If this
is done the question cannot arise in themselves.

rather it has a conclusion from matter of fact.

The question here is as to their sufficiency to
the facts must be first ascertained.

In Democratic to evidence it can never be taken
except when the fact is joined and evidence
offered in support of that issue.

as dependent to proceedings is taken to allegations
in support of the case. So when Democratic to
evidence is only taken to the evidence addu-
ced in support of one side of the issue after
issue joined. The former can never be taken after
issue joined. The latter never before issue joined.

It is slowly agreed that when the whole
evidence exhibited is written it may always be

denounced to, and the party exhibiting it must either join in denouncing or waive his evidence.

It being all settled there is no trace of a variance - The writing makes it certain. 2d Ed 72
Cant 144
2d Ed 574
Cant 370
2d Ed 313
2d Ed 7
Cant 186
When a deed is exhibited in support of a tale, or where a covenant is exhibited in support of debt. They may be denounced to.

But whether a party exhibiting his evidence is bound to join in denouncing the evidence is a question not settled by the old authorities. Cant 186
5th Ed 184
2d Ed 57

2d Ed. it is held that a party is not bound to join, and the reason assigned is the uncertainty of such evidence. But in this the following rules are to be observed.

1st It is clearly settled that in such cases both parties may agree that the evidence may be denounced to. Here there can be no objection for there is no one to object. Cant 182

2d It is fully settled that if the testimony of a witness is adduced as evidence to prove any

Law and Evidence

definite fact. He advances both ways always
by admitting the fact itself on the record at-
tains the other party to join in demanding
to waive the evidence. So if it were a party
opposed a step to have admission by negligence
keeping one of the other will admit that the
evidence was lost by negligent keeping the way
denies to the evidence.

1844-18
27-31-28

In the case of it was the very fact that in
fact it would be singularly to deny.

A.B. It seems to be now settled the testimony
that if a fact evidence which is admitted
as evidence is absent and sufficient and parties by
realizing it to be true on the record may insist
the other party to join in demanding to waive it.

1844-18
27-31-28
27-31-28
27-31-28

Forfeiting the evidence to be true is the same
as confessing the fact, for one necessarily follows
the other.

27-31-28

That confessing the evidence to be true
denies away, while the party to waive the

After the jury for -

4thly If the evidence is so weak and indeterminate the adverse party cannot seem to it without admitting the fact which it leads to prove.

But by such admission he may seem to it whether he will or no. The example is given to this effect.

By then not a determinate evidence is inserted that which is not distinguished from certain evidence is both as the witness himself is not certain and positive about, as if he thought Ex. 218
 " that such an impression."

Now if such is the form recommended to, it would be impossible for the court to derive an inference from it. A jury might indeed in the presence of the jury a single witness and after the facts are ascertained the court may draw conclusions from them.

The fact then must be admitted.

So if in fact a witness is introduced to prove a conclusion by negat, he says he believes

Direct and Circumstantial

It was said by a student, "How much the fact of the property being left unguarded is admitted, the jury ought not to be obliged to give the defendant a verdict, for it raises the question of fact to the court and that the court would find it would clearly be nugatory."

Ans. If the evidence is circumstantial the jury determining to it cannot deliberately admit or reject every thing which it contains to know - every thing which the jury might infer - this is distinct from the last kind of evidence.

The juror may testify positively to facts, which fact are circumstantial evidence only. The judge can make no inference of fact. If it not admitted it would be of no avail.

Circumstantial evidence is most frequent in criminal cases for crimes are most frequently committed.

Circumstantial evidence is most frequent

How and How Many?

1/6

to prove facts, which facts would be proved by the
fact. If the latter facts must be admitted. 1/6 122. 44
1/6 122. 44
1/6 122. 44
1/6 122. 44

It then was his incumbent to be proved of
course to not the duty of the other party to
be proved of course. It was his incumbent to
be proved of course, to not the duty of the other
to prove.

But it in the last case the duty remaining
must make the admission of the other side
to prove. The court can't give judgment, for
the admission of the court, the truth and
right as facts as the relevancy of the evidence.
The court do not must therefore be awarded.

The Superior court in 1767 decided that on
Hemmer to have evidence before a single magi-
strate, the opposite party was not bound to
be in attendance.

The reason given was that had proceedings
before a single magistrate of justice would tend
to entangle their proceedings. I think this would

Memorandum

July 1872
Have been ever present for a legislative purpose
in court.

The same court has decided that the
body is not bound to join in a decision to
endorse the chiefly written and all certain.

It is much to say that no decision
to endorse the decision, as the evidence
is all written.

On December to endorse the point in issue
whether the evidence is sufficient
to sustain the case in fact.

It is here to be observed that the whole case
is decided in support of the issue is to be decided
to support any fractional part merely.

For the question is as to the sufficiency
of the evidence, but whether the sufficiency is law, is not
a fact might be sufficient which the whole
evidence is sufficient.

The decision is not to be decided to be

with advantage may be taken of any defect in the pleadings after the answer is returned. It determines advantage may be taken of a defect in the pleading by motion in arrest of judgment after verdict.

We must be so careful that the motion here is on the same footing as a motion after verdict. I doubt whether it is the same after general verdict, but I think it more like judgment by default or general verdict. Other side defects in the pleadings in as much as it is a motion for judgment, since the jury will not know the facts unless these facts had been stated.

But no answer to evidence at the trial can be taken on the reverse.

I think it stands on the same ground as a motion after special verdict or motion for judgment.

A special verdict finds no facts but those that appear on the record, and are in issue.

May 21st
B. N. P. 1848

Wentworth's Plea

It is now quite impossible in Court, when a defendant's case is taken up, abstracted details in the pleadings are allowed to be introduced, or in order to 'get ahead' to the Court. Especially now in the last case, one wants to find the law in fact immediately given, just as it is. It is a pressing necessity to move on now.

24th. 1888

There can this demand be taken enough to the Court, and that being who takes the affirmative of the case.

25th 88

The Court where evidence is demanded to bring evidence demand the judgment at the Court, who then has to be taken to join in the demand on trial. The Court will not compel him to do it, unless there is no ~~contingent~~ cause. For that would be to delay justice in trifling sentences.

26th. 1888

27th. 1888

It is now to join he wants to have to be heard in Court again, and the cause

Don't read the story

to be sent back to the court of appeals
again.

Chas. 18
1862. 17

On remand and finding the most prudent
is to discharge the jury immediately and then
the writ of enquiry is to be expected after
judgment.

Sometimes however the jury steps down
again immediately. If damages is found for
the damages are already assessed. If
otherwise then the judgment is as usual.

Chas. 18
1862. 17
1862. 17
1862. 17
1862. 17

In order to avoid perjury there is a pro-
vision of the statute that the jury shall not
be judged otherwise except the damages be.

But if evidence is objected to is
admitted by the judge, it can't afterwards
be removed to, for this would be to call in ques-
tion the interlocutory judgment of the court.
However it would raise the question of law as to
the error which would be reversed at

Plea and Pleading

Feb 1857

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11 Jan 1857

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In fact, the remedy is by bill of redemption, and if the party offering to redeem is authorized by the court, his remedy is by filing a bill of redemption.

The whole proceedings on demurrer to evidence is under the direction of the court who may prevent the admission of any evidence, and what amendments shall be made.

The mode of demurring is thus. The party demurring must first state his objection to the record and then he is to allege that the evidence is not sufficient to law to maintain the plea - and he must offer sufficient evidence to that behalf. The jury may be discharged from sitting on that.

1857

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By the plea, the jury may be discharged and the case may be carried off for review.

Of direct of judgment and reflection

A direct judgment is to find a thing to be
to be what it is, or to be as it is.

It is done usually so, in order to be
certain and correct in the mind. It is not
the same sometimes as a great judgment or
opinion, without opinion. It usually does
the same of fact, but not of opinion. 388785
388

But this is not necessarily the case, it
may be other than that, or after a manner to
be as it is. It is not necessarily the same, but
it is not necessarily the same, but it is not
necessarily the same. 288785
288

According to English practice it is usually
to be as it is, or to be as it is. It is not
necessarily the same, but it is not necessarily
the same. 288785
288

Advantage is to be taken of occasion
and occasion, by some trial, or by a trial
of the trial, or by a trial of the trial.

Declaratory

To it declaration is made totally from the writ,
the judge will be answered and if not his
error - If of deception would in doubt and
not in case - here his oblique on the record
236. 178 But there is a variance for the writ was
not so much declaration.

It also when the verdict is in materially from
the issue might arise to be left where the issue
is not found either way but partly - cannot
be moved unless the issue is found by verdict
the facts in question are not ascertained since
the verdict of the jury is a conclusion from
facts.

To if the issue is whether or not left with
Jury is a declaration and verdict - left with
Jury - it is a declaration - this is a material
point - he must not say cannot say in a general
manner as those facts which are subject to
be proved or disproved implied from those
341. 178 that are found.

It is of course a relative question as to
 whether the evidence is sufficient for the jury
 to find the defendant guilty - for the jury only finds
 the facts - it is the duty of the judge to find
 whether the facts found are sufficient to justify a
 verdict of guilty or not. But here the facts
 are not sufficient to justify a verdict of guilty.

On the other hand it is the duty of the
 judge to find whether the evidence is sufficient
 to justify a verdict of guilty or not. If the
 judge finds that the evidence is not sufficient
 to justify a verdict of guilty - a verdict of
 acquittal is the only one which is possible.
 The judge has no discretion in this matter.
 He is bound to find that the evidence is not
 sufficient to justify a verdict of guilty.

So it is plain that it is necessary to find
 out what the facts are on that point - and this is
 the duty of the jury.

There is no doubt that the difficulty of
 finding the facts is a very serious one.

that my land surveying is very different and
that my profession is perfectly distinct from the
off. I do not intend to be the subject of
a little - He has not alleged that it
was his house - Is it not apparent that any
right of his has been violated. I am in the
same position.

If it is brought for calling the off
a liar - verdict for off this should cover the
defect, for there is no cause of action - The
words not being actionable.

Aug 25
1841
10-25
10-25
2-12-50
Mar 1823

If an action is brought against an officer
of a State of Kentucky - If not alleging notice
to have been given to Dept of the non payment
this is not aided by verdict - He is right to
the 1st notice given to Dept. It goes to his
title and not his statement. The notice can
never be presumed and is alleged.

The same things must be maintained.

Verdict and Findings

In the defence pleaded by Jiff in to the
statement the question. A statement of the
defence is only defective, and it will not
injure Jiff, if defence itself is defective.

So if in debt he should not guilty his no
reason in defence. He could not avoid
it.

But if accused and Jiff's fact should
but without mentioning the day on which
he was, and except for Jiff this will be
satisfied for the defence is not, the defect
generally to the statements.

Inst. 774
Inst. 774
Inst. 774
Inst. 774
Inst. 774
Inst. 774

Another general rule is that any defect
which will subject an accused of judgment
must have been such as would have been
fatal or general disclaimer.

So if it appears that it would not have

supported general damages it will not support a motion to arrest.

But this will do not hold a course.

It is not true that whatever will support a general damages will support an award of judgment for many things that would have been in an award of general damages, are more or less contained by verdict.

And the reason of this is that if the declaration omit some particular circumstance without which the party ought not to have recovered but which is necessarily implied from those which are alleged and found. This circumstance after verdict will be presumed to have been proved to it in favor the Plaintiff does not state the value, this is on general damages, for no rule of damages, furnished yet is raised by verdict, for the Plaintiff is presumed

Verdict & Findings

Inst. 1407

Ca. H. 384

Inst. 44

to have proved the value. The verdict establishes
what before was uncertain. The rule of dam-
age is supplied by the verdict.

If heppap declared on and no day certain
bait on which the heppap was committed. He
ought to show the day for it must appear to
have been committed before the writ issued.
But the verdict is presumed to have been
committed before issuing the writ - Since
the jury under the direction of the Judge
would not have found for him unless the
heppap had been shown to have been com-
mitted before issuing the writ.

4 Dec 1850

5 Dec 1850

- 139

- 140

In other words the principle of the rule
respecting a defect being aided by verdict is
this - after general verdict and with humane
that facts not alleged but necessarily implied

the first of the month of the year
of the year of the year of the year
of the year of the year of the year

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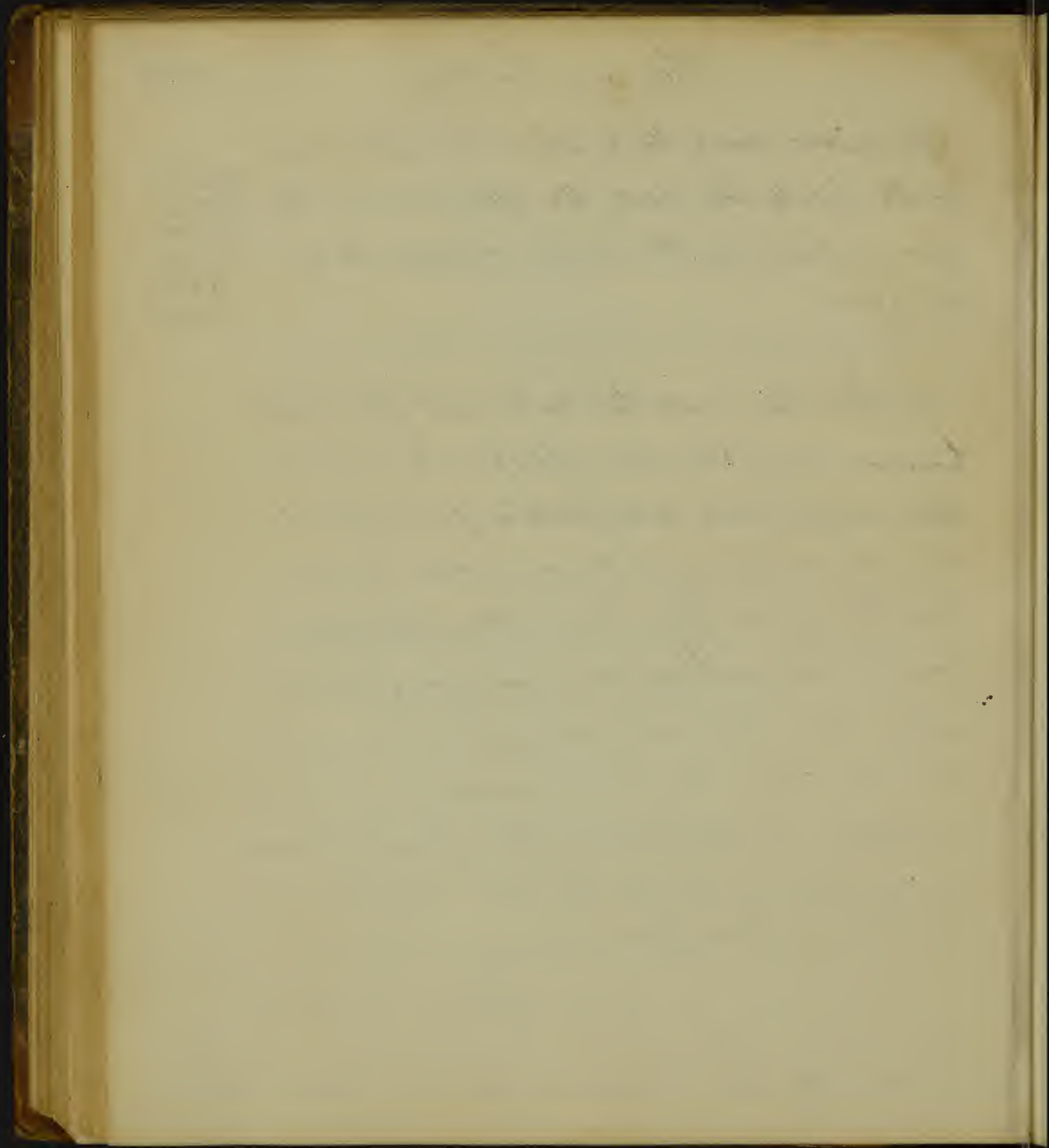
after we've every thing which it was necessary
for the party who took the affirmative of the
issue to prove for the purpose of supporting
the issue.

1813 34
420 321
355
481
12.8.14.5
11.11.172

On the other hand the court said after verdict
presume any fact not implied in those which
the verdict finds and which in point of fact
it is not necessary to prove in order to sup-
port the issue. E.g. Is it Plt in possession of
some value not value of damages - jury find a
value then Deft can't complain for he might
have demanded. The verdict uncertain what was
uncertain. So as he must have proved a value
in order to prove his case, the court will presume
that he did prove some value.

Presume in possession of value is large
and not in affirmative it is the presumption,
So the Plt must be supposed to mean that

1813 34
420 321
355
481
12.8.14.5
11.11.172



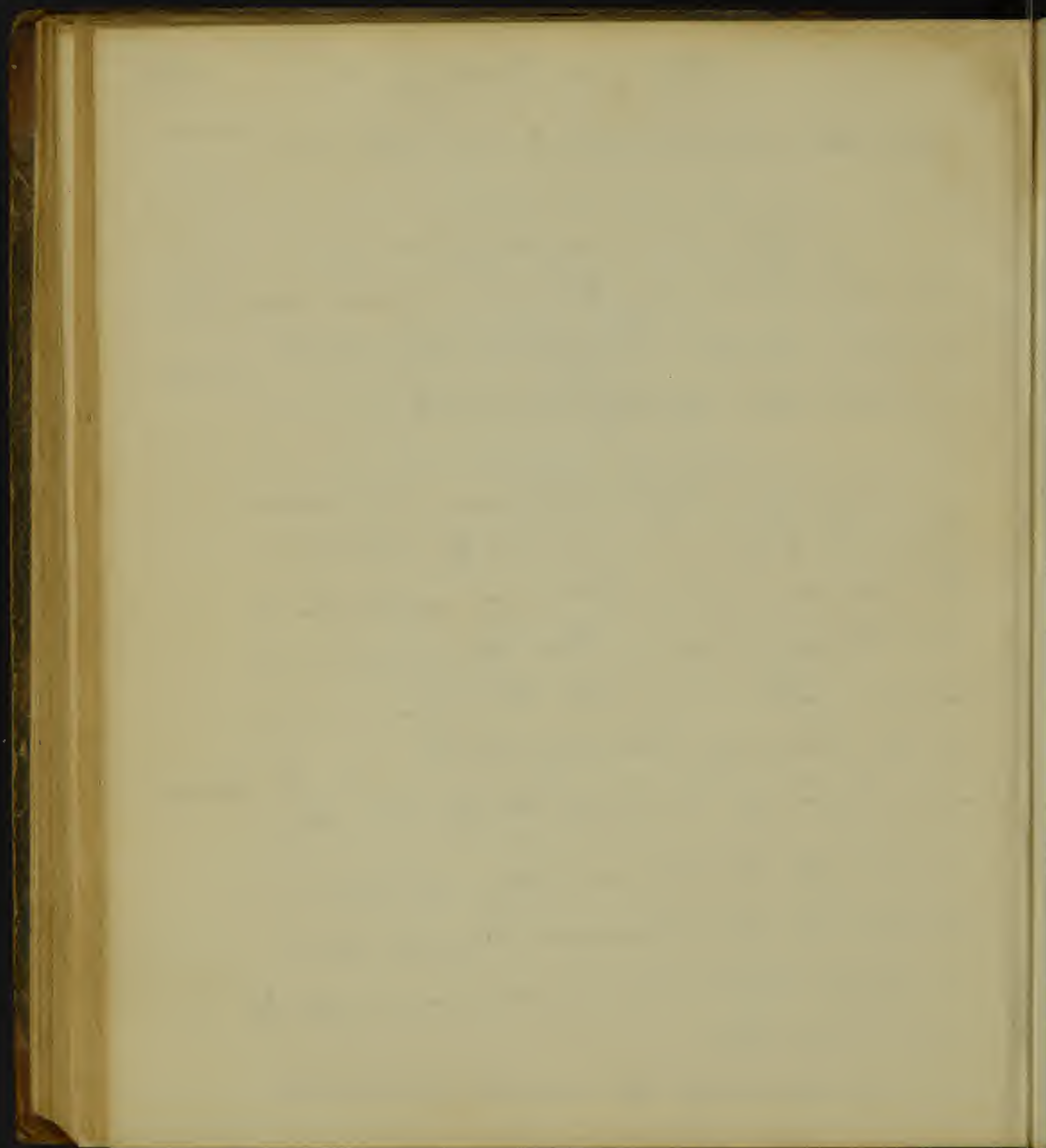
which was committed before the date of the writ. 30th 1841

And if it is in the discretion of the court to say that a future day, this is an impossible day, and thus is the same as saying no day at all. 1841
So it comes within the last general case.

So if a grant of an Adversum is tried without laying it to have been by deed the verdict must be for a grant of an Adversum, and to be proved and the presumption is that the judge would not have suffered any other than legal evidence, i.e. the evidence of a deed to go to the jury. 1841
Since the fact of its having been by deed is presumed.

On the other hand nothing can be presumed to have been proved except the facts which are alleged and proved, and such as are necessarily implied from them.

So exactly the negative part of the



rule not mentioned in the. Suppose a declaration
to be untrue void of substance. You taken
as it is found for. If "declaration" is not
aided. So no fact can be presumed which
can make the declaration good.

To if a fact of this nature is brought forward
being better in fact.

Thompson

To also if any fact is omitted which is not
inferable from the facts stated and found. This
point can't be presumed to have been proved's
verdict don't cure the fault.

17th 48

Then in act of cover and broken and an accu-
sation of suspension of condition precedent
is not made not aided by verdict to be but
not stated what your right of action.

17th 48

1st 1st 15

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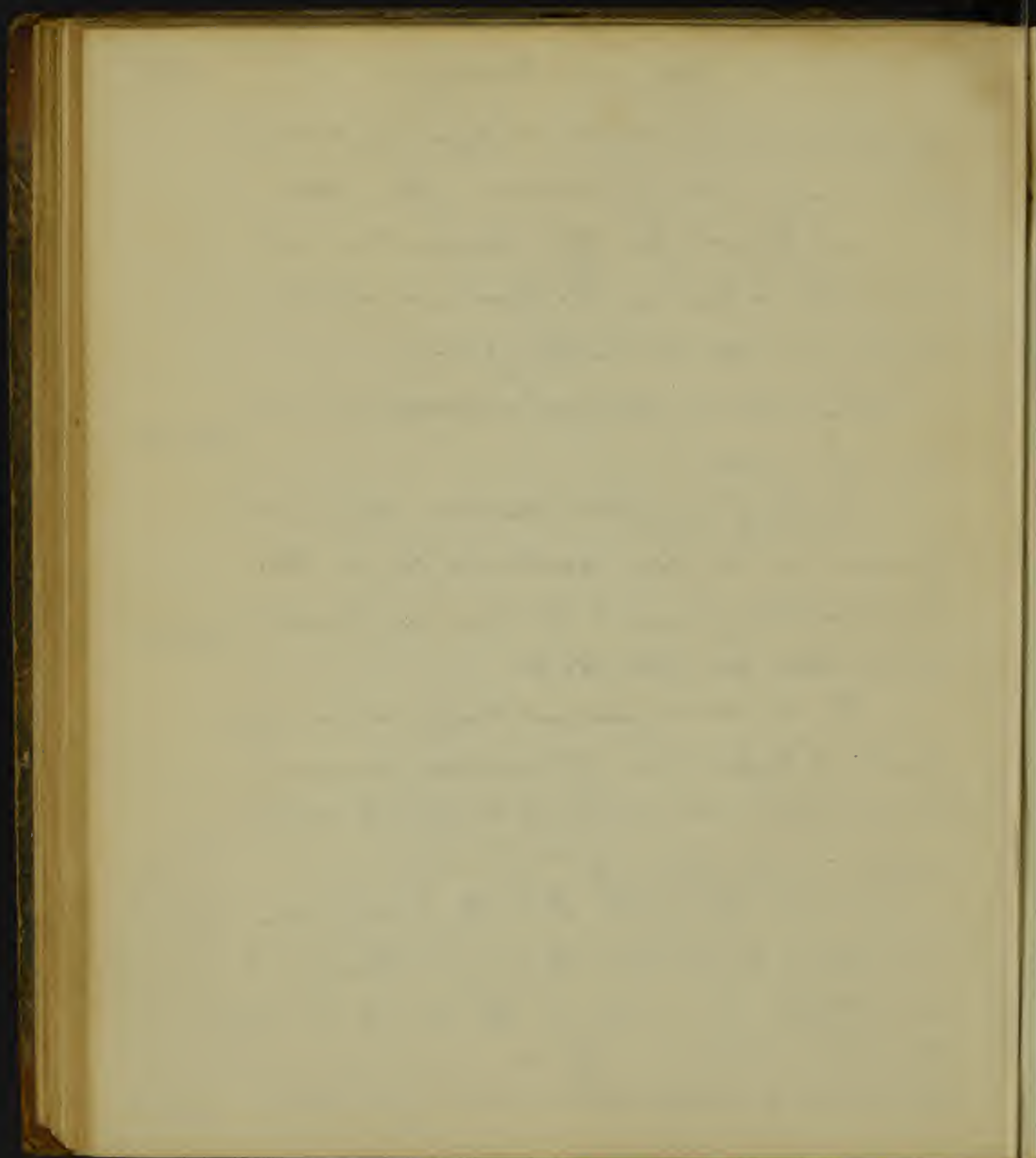
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And it is observable that the fact omitted
is necessary to warrant the jury in finding the
facts alleged. To in fact in the case for mischief
done by negligence. If that is a science in
fact which is indispensable to cause of action,



and not inferable from the facts stated.

But not brought against a person of a bill of
exchange without alleging notice to the bill
of the non-payment or demand of acceptance -
Now the point can be presumed by the facts stated
and there is no necessity inferable from them.

But a verdict for Plaintiff does imply that demand
was made of acceptance ~~and~~ that notice was
given to the bill.

Walters 14

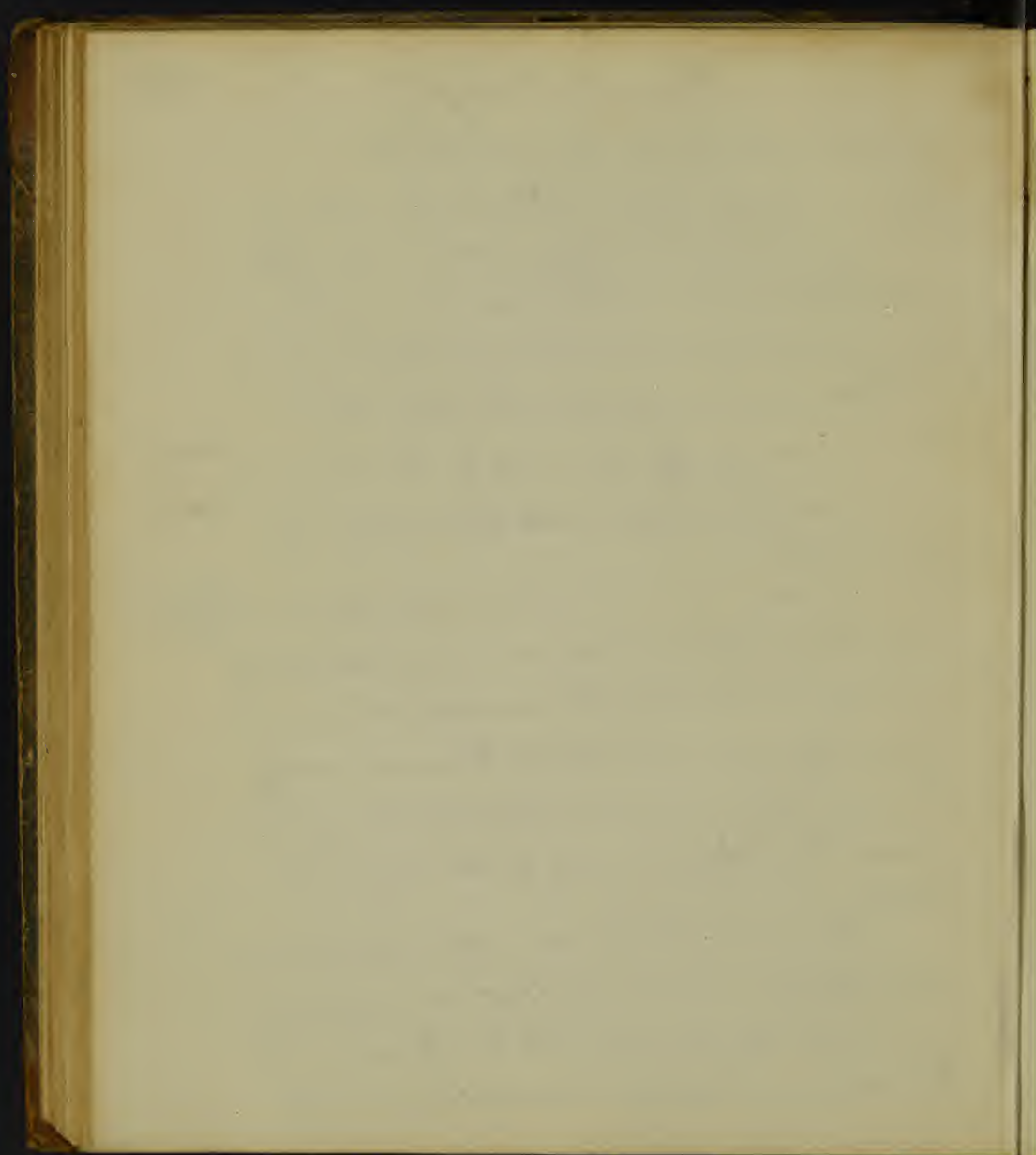
- 644

Bayly's

1000

The court cannot on this point presume
any fact omitted which is point of law merely
is necessary to support the verdict. It is not
where judgment is pleaded, the court imply
issues of fact; but it is because they are
fictitious the judgment - and to the very act
pleaded.

The court will presume after verdict any
thing which is point of fact and necessary
to warrant the finding, but to otherwise with
that which is necessary in point of law merely.



Second to know what is point of law only is
necessary to warrant a finding would be to
know on the side that the jury are compe-
tent judges of the law. But on this suppo-
sition there never could be an erroneous ver-
dict, and thus it would be absurd to talk
of notions in respect of judge!

Let sup of a point in consideration is
alleged, and verdict for, sup. then consideration
is not necessary in point of fact to warrant
the finding. They find the facts alleged and
the premise must be found since that is
alleged. It is their duty to find the facts al-
leged one way or the other.

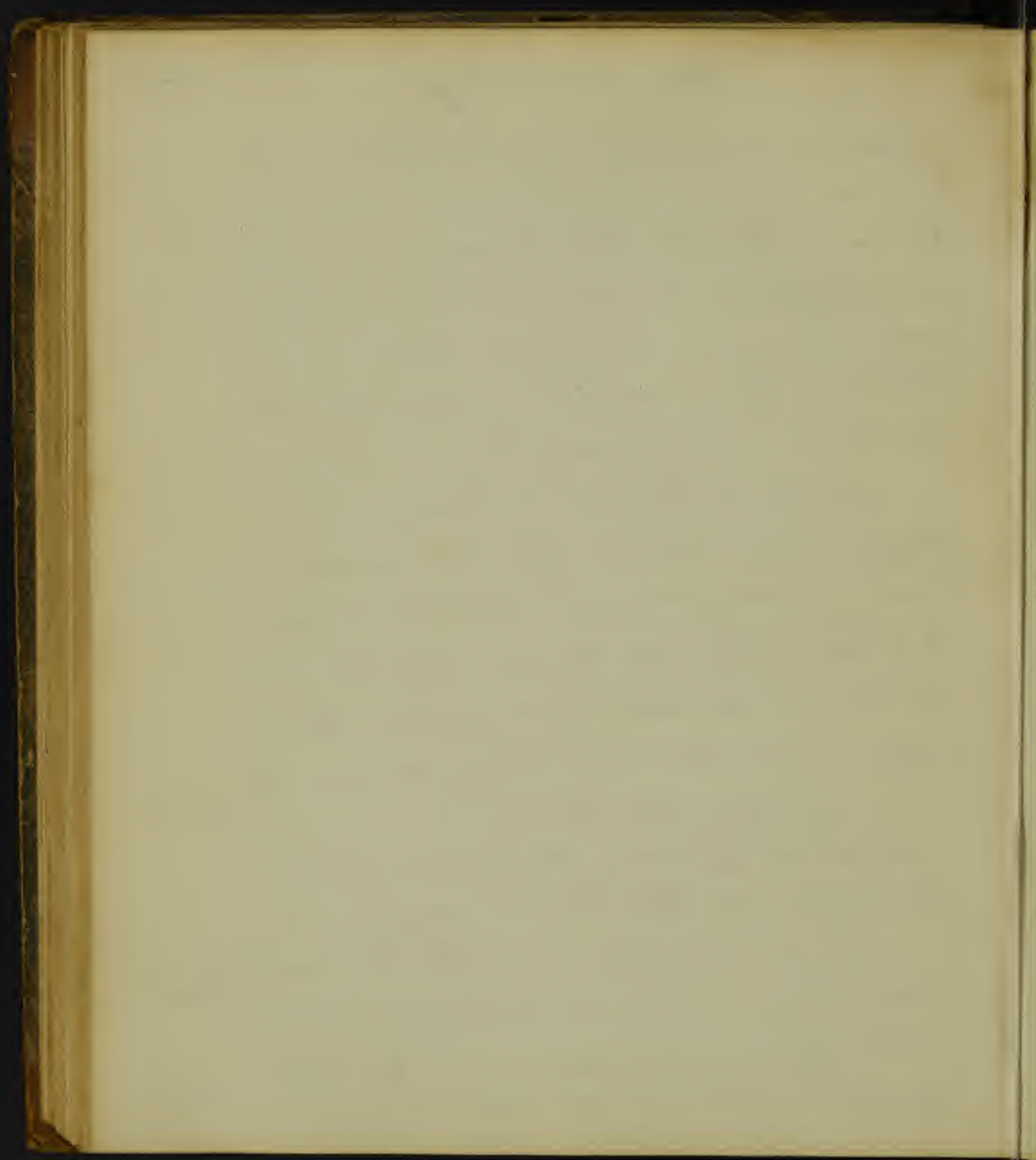
Verdict 27

But in point of law consideration is necessary.
The verdict means that the facts alleged are
true but nothing more and the verdict must
presume facts true that are necessary in point
of law.

Verdict 27
Feb 27

There was once a decision in this State
that the verdict meant this effect this decision

2 Am 180
Kearney 400



is an old one - and I think allowed.

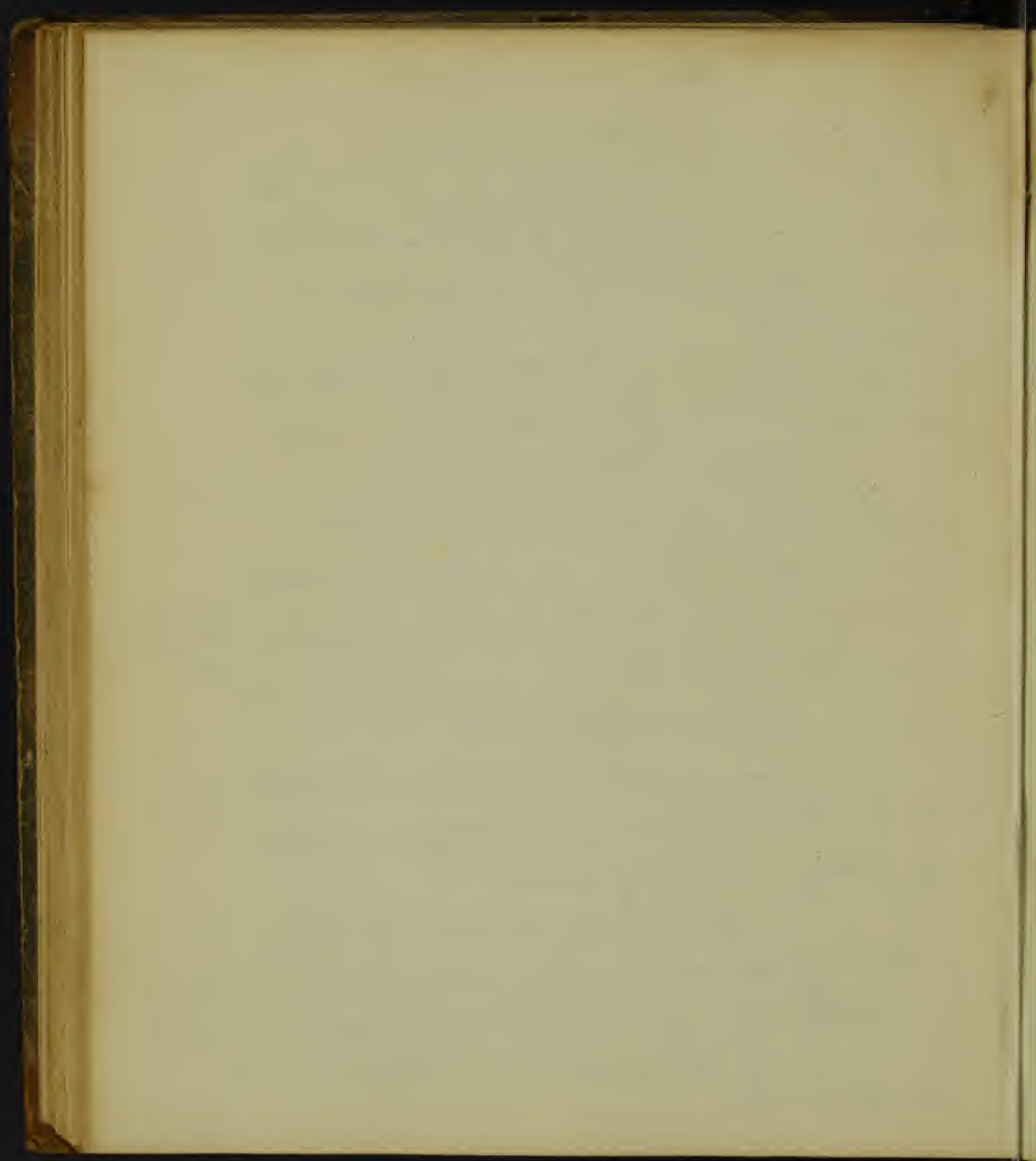
The same rules which have been given with regard to examination apply to an insufficient plea and take no account - as where verdict is found for 'Deft.'

It is not in a court after the plea of a defence taken a general demurrer. Nothing is moved, for nothing is found. & there can be no process. It is for there is nothing to process a process is taken upon. It is after the plea of a defence, for there is nothing can be processed into the facts being taken into account. The same may be said of a demurrer to evidence was not.

2 B. & C. 901
H. & C. 1041
H. & C. 1041

In a few cases, judgment must be given for the greatest defects in the pleadings and even the nothing is moved by verdict.

The rule is this - If the verdict is in favour of the party who, on the whole, is most entitled to be entitled to judgment & shall have judgment & be allowed to pay out & shall have judgment & be allowed to pay out & shall have judgment & be allowed to pay out.



to it. Replication is insufficient. Plas is the first
 motion - then in the first motion for itself the
 Plas is the next in order to move for the motion to be
 set. It is possible to remove the Plas would it
 be moved by itself. But in truth it is not to be
 moved. The motion is a waste of time. It is the
 whole world and all others as the first fault
 in the Kings for a bad Plas is good enough for
 a bad motion.

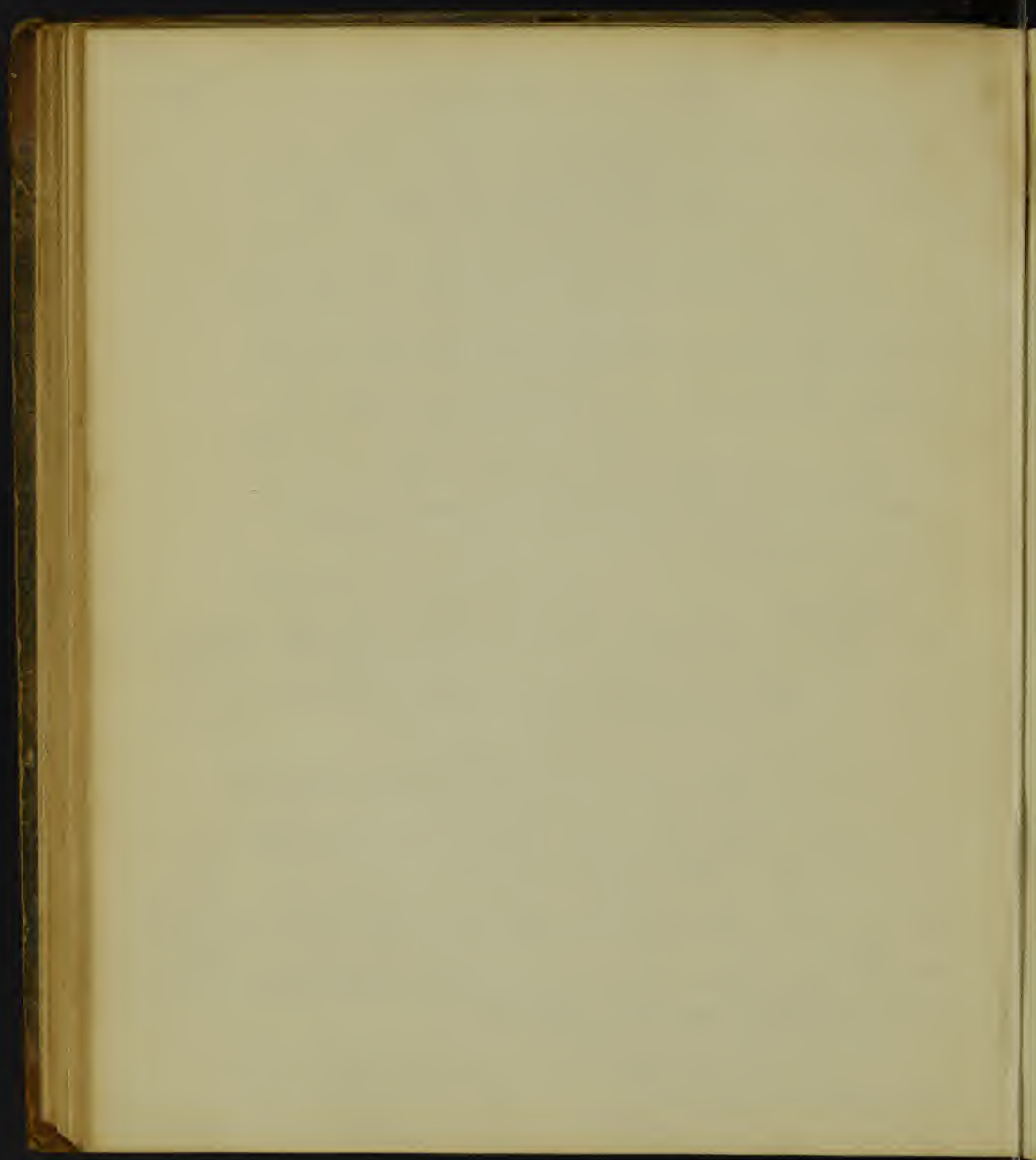
If judgment is wanted in cases of this
 kind judgment would not be given in favor of the
 be having Plas is good enough for a motion. It is true
 to want judgment would be to accept.

Nov 25
 1798
 1799
 1800
 1801
 1802

whether another case. Becket is good. The next
 replication both motions but on replication
 and for the Plas. There is no doubt but a judgment for
 the only good Plas is in his fact. The replication
 the Plas is in fact good enough for a bad Plas.
 Becket committed the first fault.

Nov 26
 1801
 1802
 1803
 1804
 1805

It is when judgment is in favor of a motion
 is wanted, a judgment against the party for a motion



The verdict was found in my favor, to con-
-sider the verdict in light of the finding, which
is at least on the whole, in favor of the plaintiff.
In fact, this is one million, and the other is
lost in the million.

1840
- 1840

It is in the matter, which is sufficient
- to be in the sufficient, which is sufficient, and it
- would be sufficient, and it is sufficient, and it
- would be sufficient, and it is sufficient, and it
- would be sufficient, and it is sufficient, and it

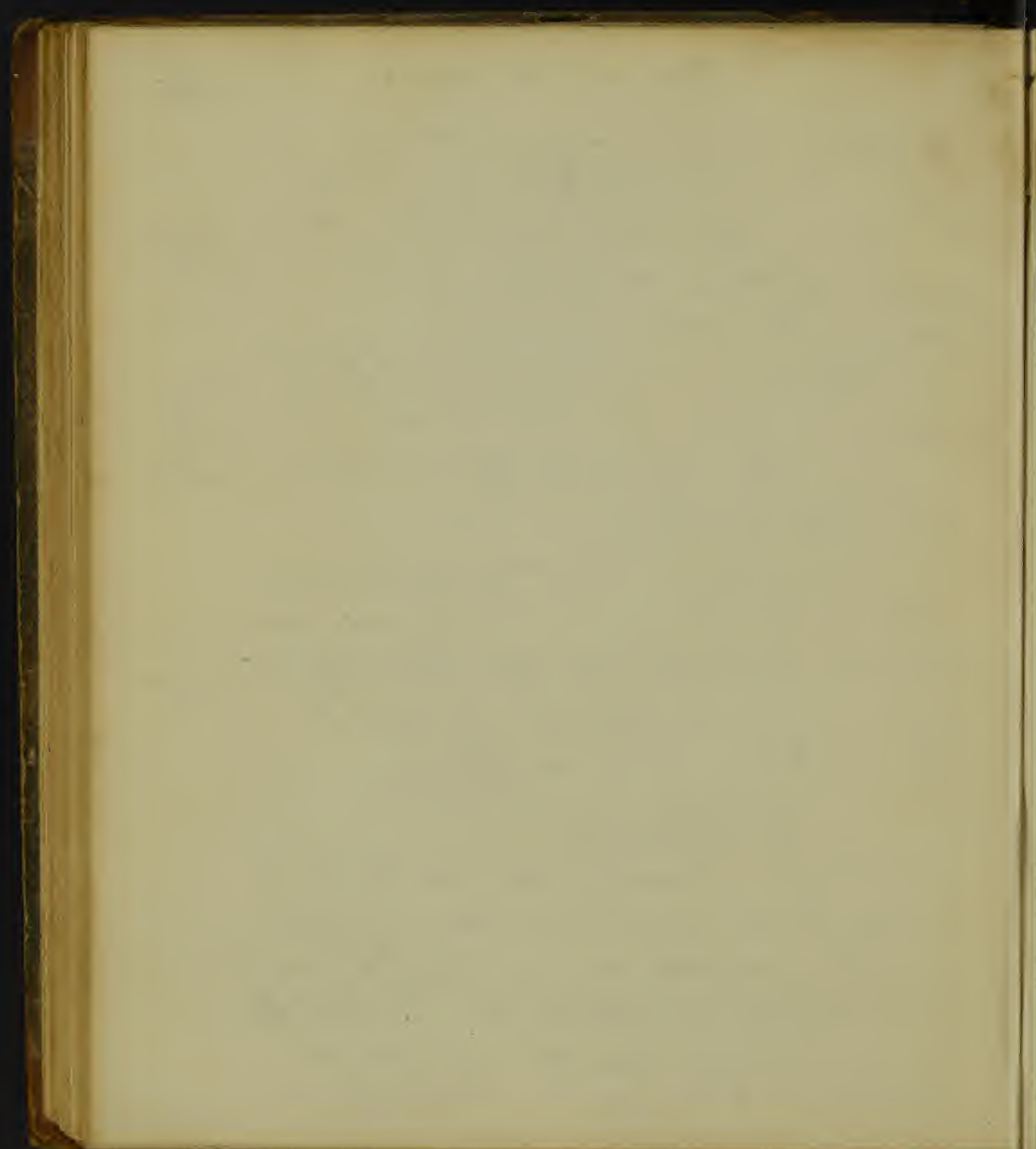
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It is in the matter, which is sufficient
- to be in the sufficient, which is sufficient, and it
- would be sufficient, and it is sufficient, and it
- would be sufficient, and it is sufficient, and it
- would be sufficient, and it is sufficient, and it

1840
1840

of the matter.

It is in the matter, which is sufficient
- to be in the sufficient, which is sufficient, and it
- would be sufficient, and it is sufficient, and it
- would be sufficient, and it is sufficient, and it
- would be sufficient, and it is sufficient, and it

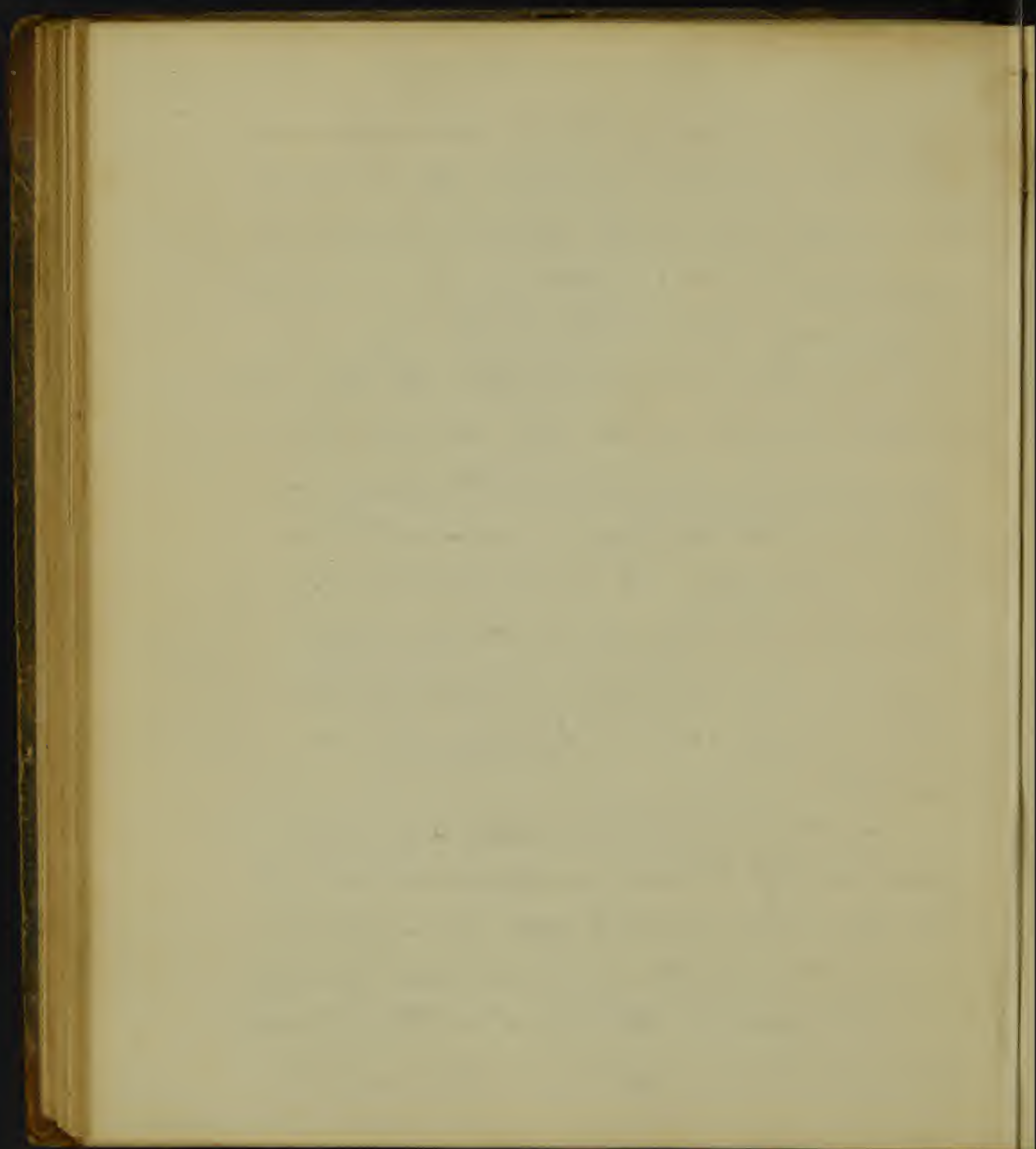


There is a plea of non est

assessing in favour of the party on whose be-
-half the judgment was rendered. The court will
decide that the action is a good party
action. It is an action, and one which
to pay money before a certain day, and
there is a plea of payment before the day - here
it has been joined on this plea and found for
Plf. yet it is immaterial for the finding does
not prove that the payment did not take
place on the day - so to say it had been
found the other way, it would have been im-
material - But in its present state the circum-
-stantial part of case is a plea of non est will be
used.

Ke 334
Lam 334
Hill 334
Lam 334
Lam 334
Lam 334

To say it is a plea of non est is a plea are both
good and Plf. traverses an immaterial part of
the plea and verdict for Plf. yet a verdict
is rendered, for there is a good cause of action
and good defence on the record. So the court can't
then for whose judgment ought to be reversed.



There is no to not in the minds for diff?

Does the diff admit what is not possible?

The more we want to be able to prevent a
 you that is not making.

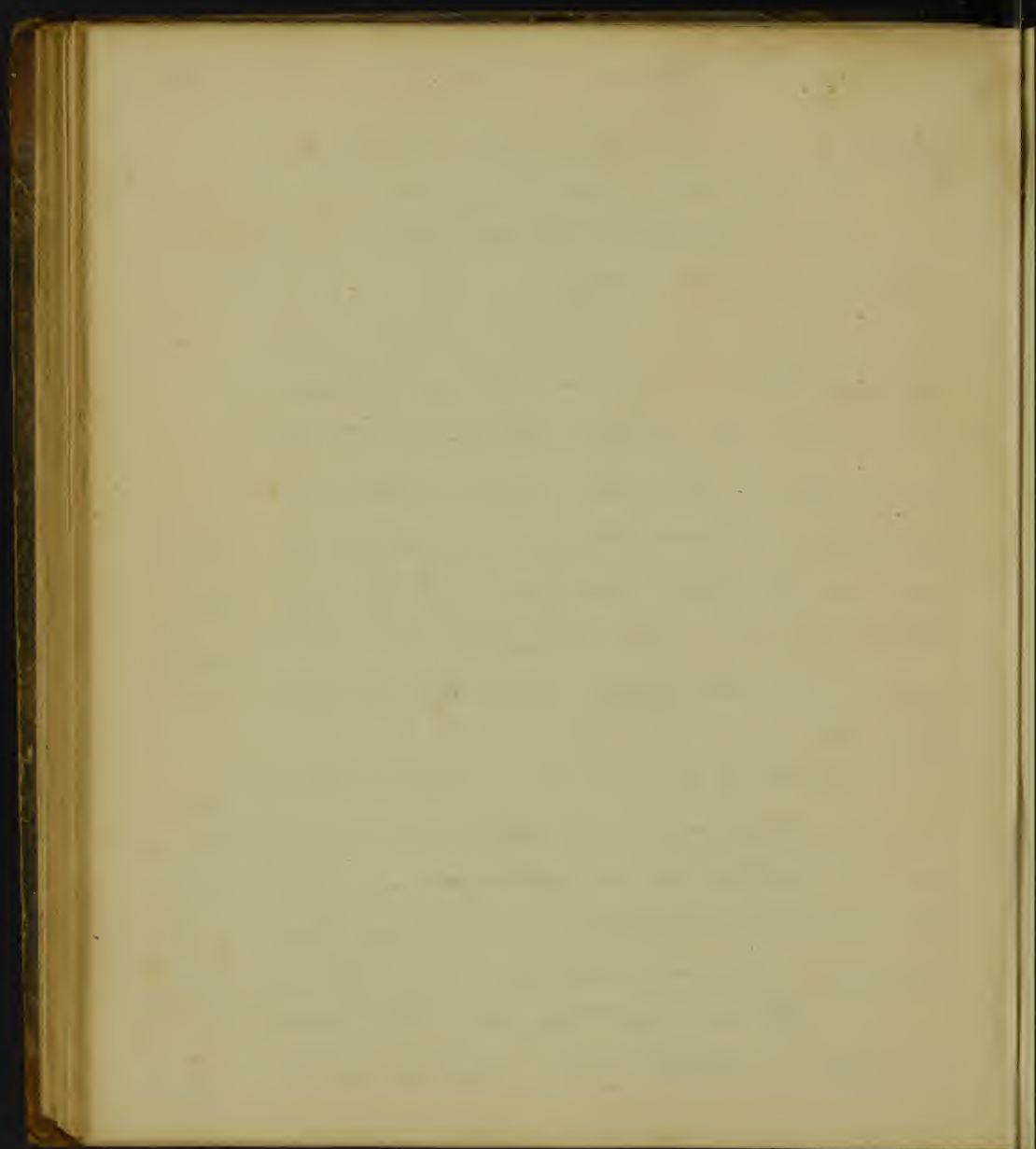
But if a free is actually sufficient then
 relative part as I agreed that no separate
 is awarded, for to clear that no evidence of
 joining you on that plan could make a mat-
 erial issue. And a Ref reader is now to be
 awarded for defects which cannot by any
 manner of joining you be avoided - time if there
 were to be another issue it would be no better
 than this.

Stair 150
 5 to 130 6
 5 to 144
 West 150
 199
 200
 1800 301
 21.30
 180 64

I also of declaring good - plea insufficient
 and the later part, and diff has no direct judg
 will be awarded, but no separate reader awarded
 for it would be impossible to render an issue
 that would be more correct.

1800 301
 21.30
 180 64
 1800 301
 21.30
 180 64
 1800 301
 21.30
 180 64

Off the diff here, for the whole
 would be entitled to it - 1800 301. 21.30



130 Rehinder awarded

Thatings begin to show at that stage when the first deviation from the rules of pleasing occurs.

If however good plus good and diff. has
 not an immaterial part of it. Now a Rehinder
 will be awarded that he make another bid or
 a Rehinder left as a material part.

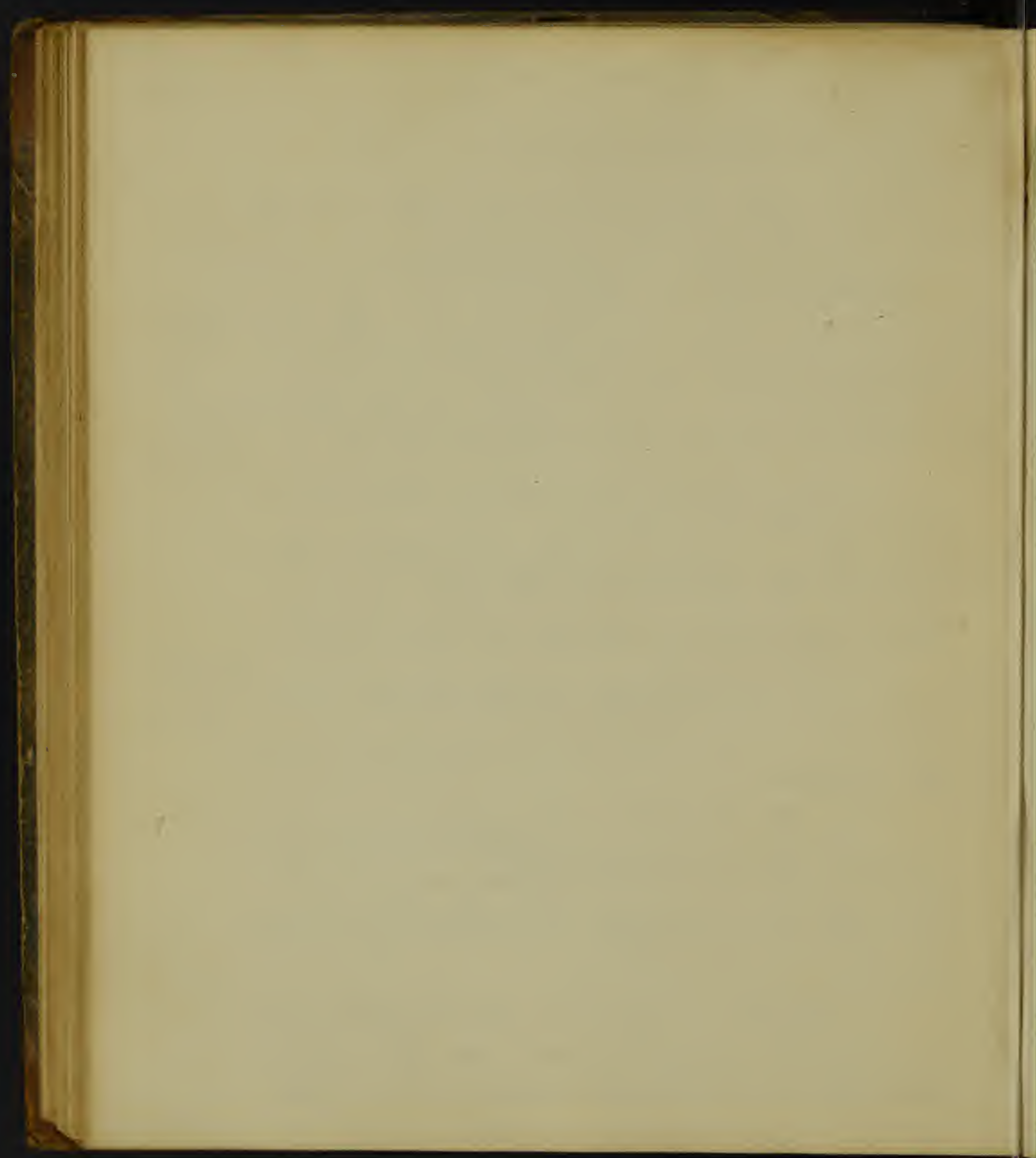
38000
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But a Rehinder is never awarded on account of the immateriality of the offer in favour of the party who received the first bid. I don't take any decision in this point. But Butters even asked an attorney who has been of a case where it was done, and he was covered in the negative.

1000
 1000
 1000

If then the bid is good, and an immaterial part is awarded, and judgment is by 1000, 1000 has no remedy - the should have taken them as a material part.

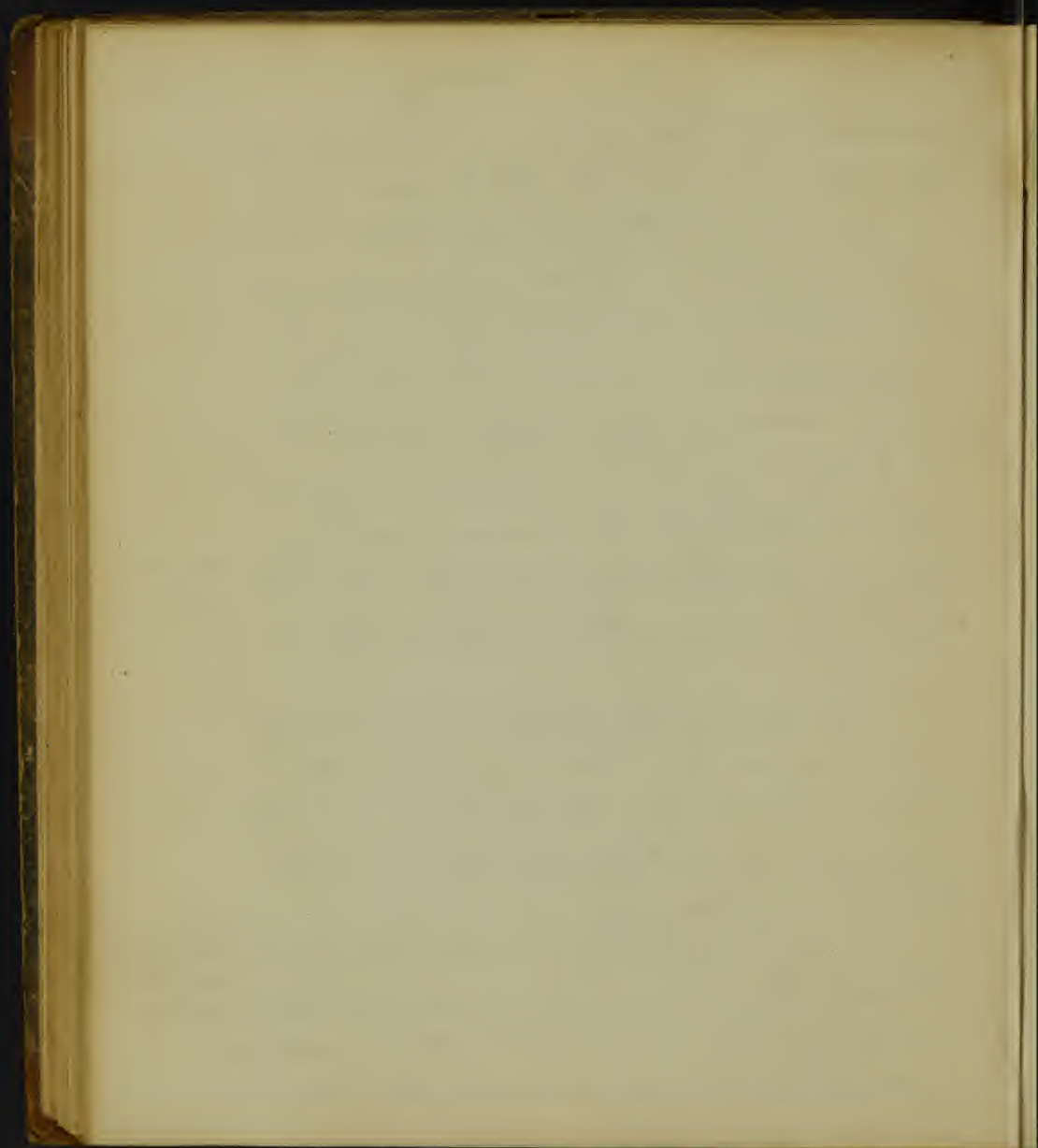
On the other hand the material if found to be a good but immaterial if found the other. It is an action that is a contrast to pay at or before

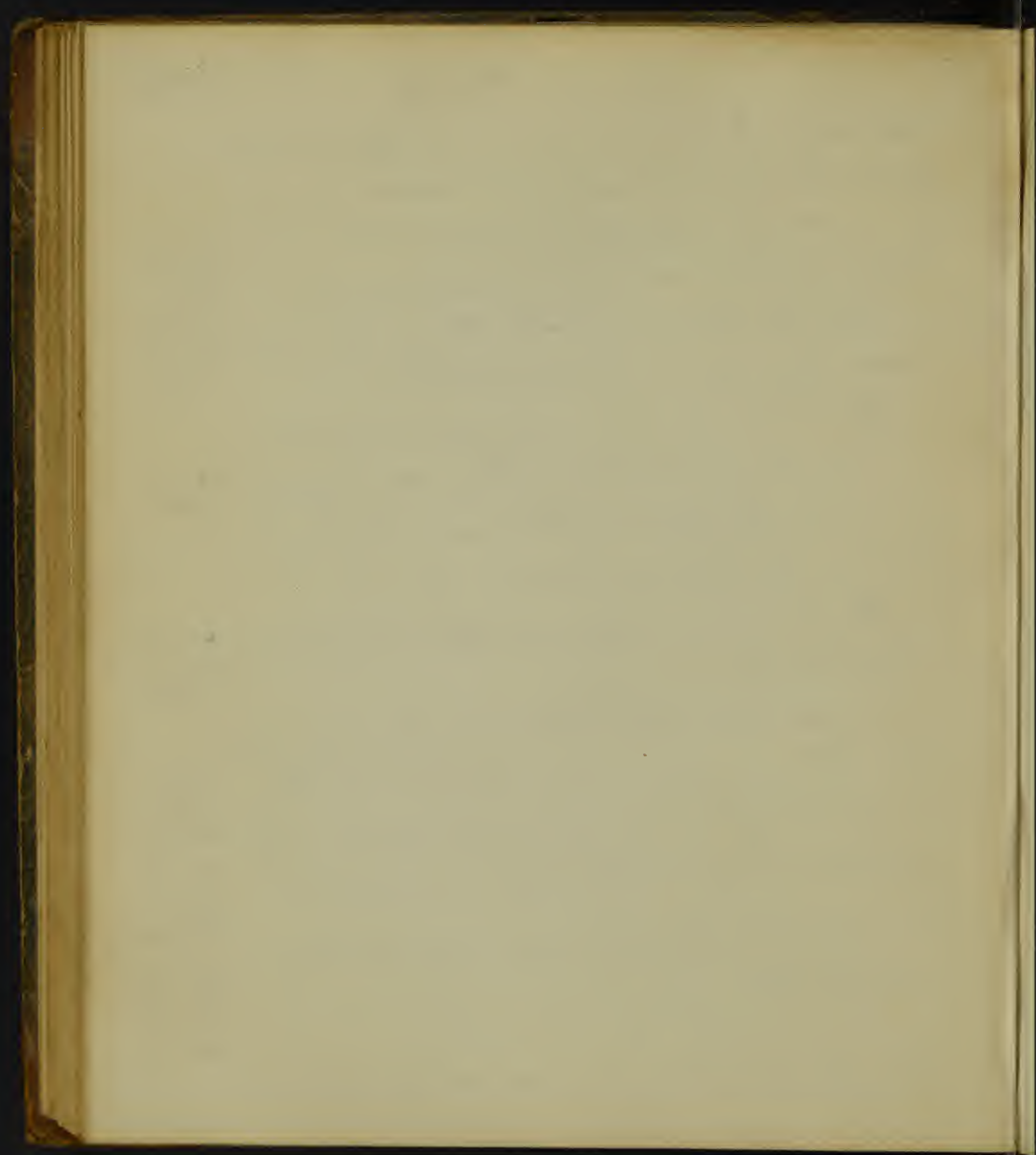


a certain way. Idea of argument before the day.
 One found and found for all to be immaterial,
 but of found for left to be material. The result is
 that an immaterial but because it is not matter of
 fact and yet an immaterial fact is an im-
 material defect. An immaterial because may
 always be doubted - but besides in many cases
 the finding may make it material. I say it is
 singular that although the because is matter of
 fact, yet the finding may make it an immaterial ^{Edm 894}
 defect. The reason is, the finding makes it ^{Edm 896}
 material.

If the jury after finding a fact specifically
 make a conclusion of their own, permit, the
 court is not bound by the conclusion, but will
 give judgment on the facts without regard to
 the inference of the jury.

If the fact is as to seized in fee and ^{11 Mo 10}
 the jury after finding the facts conclude that ^{West 228-6}
 "that this J. was seized in fee" - This is surplusage. ^{2 Mo 180}
 A statement is never reversed after a demurrer. ^{2 Mo 180}





to defects in pleading. But judge may be no
 reason for defects in the verdict. If the jury find
 only part of the story, omitting what is material,
 judgment must be rendered on it. It is wise to hear
 facts.

The reason that in this case a material part
 of the facts on which the judge ought to be
 satisfied is not ascertained, and the court can
 render a judgment only on what is ascertained.

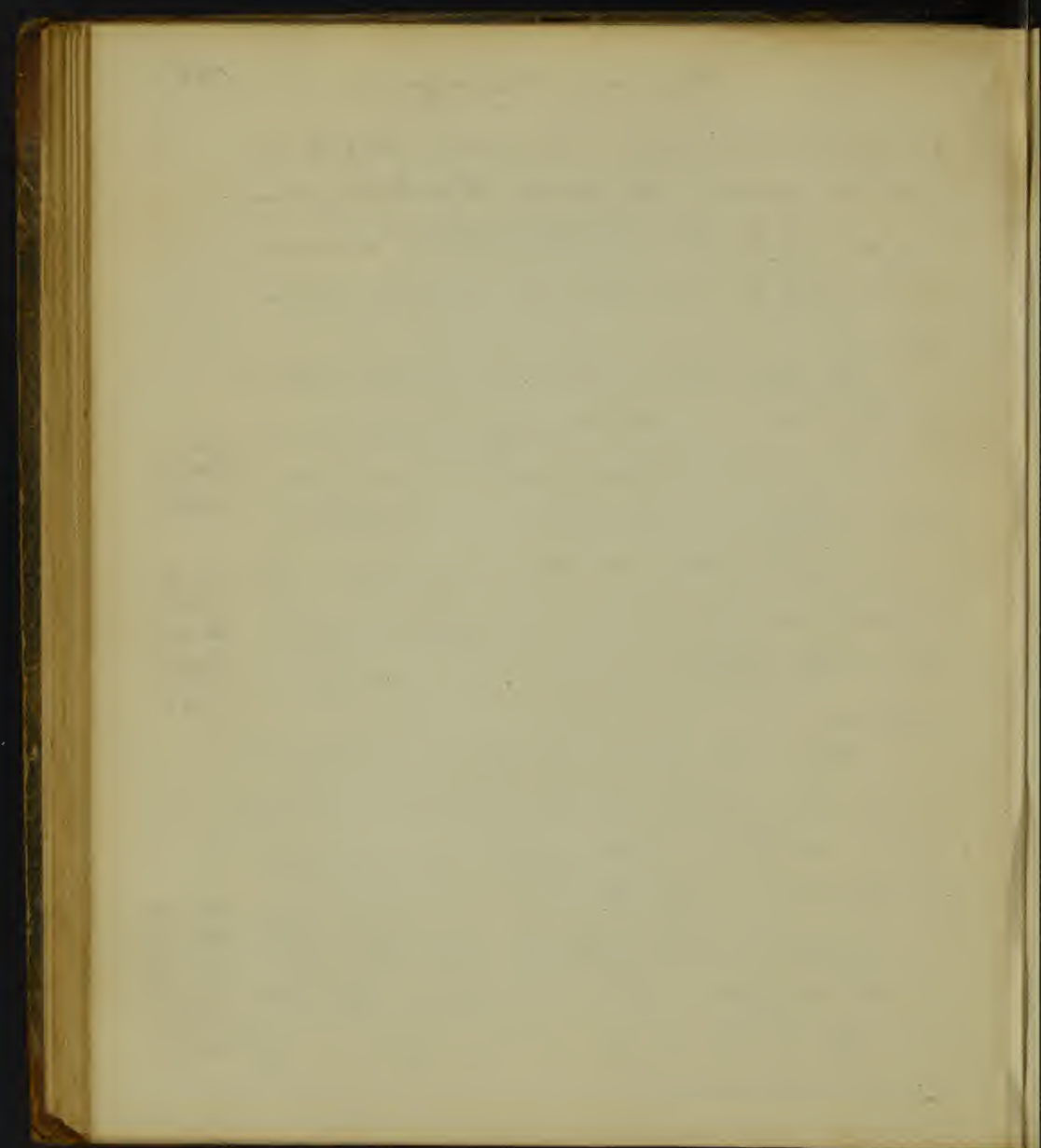
Less if the thing omitted is immaterial. If
 it finds all the substance it is sufficient to be
 then is there sufficient ground for rendering a
 judgment.

And as the omission of what is material
 vitiates the verdict. It is a material omission
 between verdict and issue is good cause of arrest
 of judgment. As if the jury instead of finding
 the issue, find what is foreign to it. It is cause
 of a bankrupt. Issue on the point that debt
 is a bankrupt. Verdict that debt is a bankrupt.
 Verdict that debt is a bankrupt.

11th 111
 11th 112
 11th 113

11th 114
 11th 115
 11th 116
 11th 117
 11th 118

11th 119
 11th 120
 11th 121
 11th 122
 11th 123



Hens and Hatching

But a verdict which finds the issue is not satisfied by 8000
by finding more. The latter part of the latter
age, and the maxim here applicable is "White
free hostile and distant town."

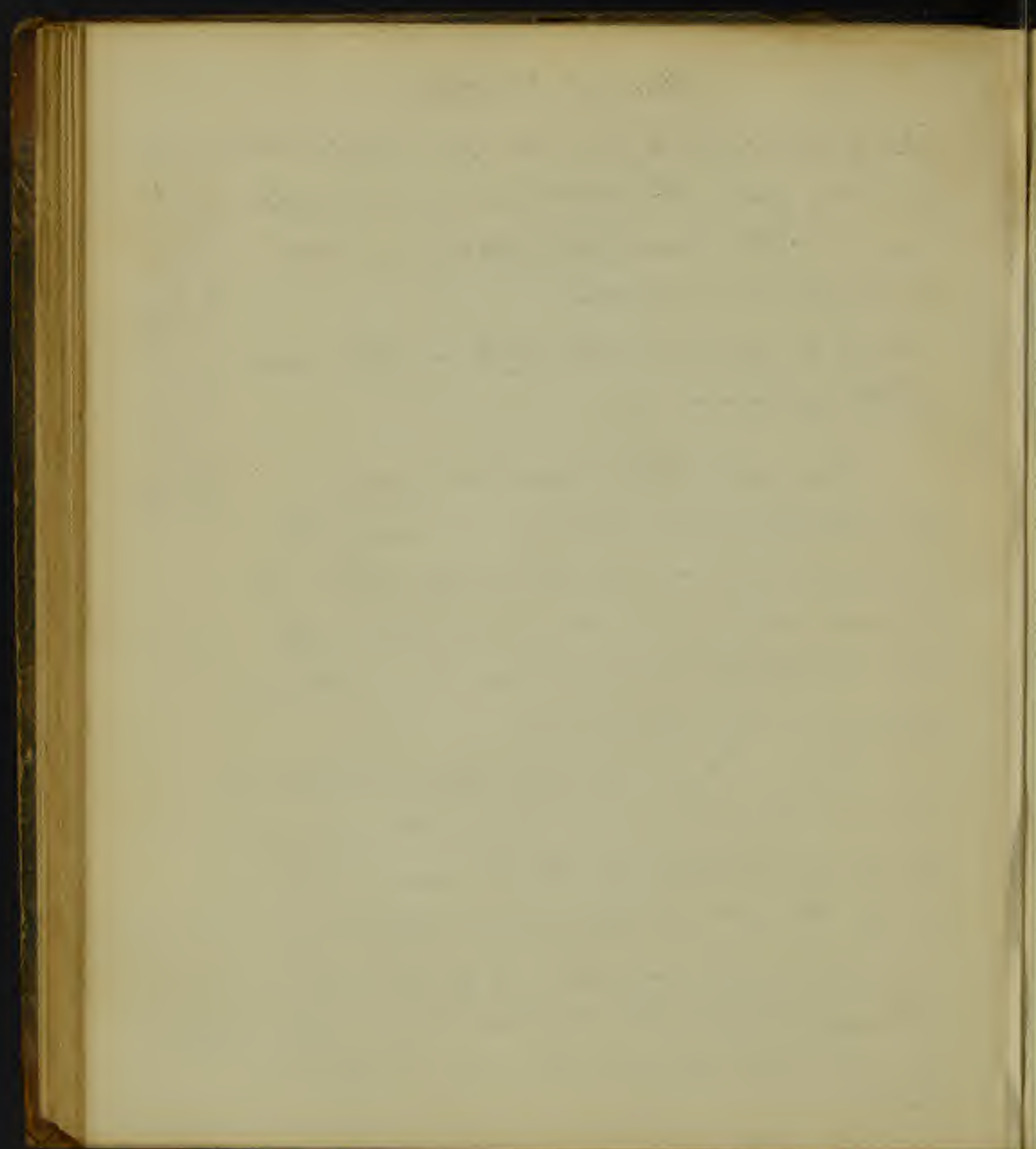
So if the issue is whether "Doft has to be held"
a better beyond sea.

There is no reply to general verdicts.

If a special verdict find only evidence of the
fact in issue, and not the fact itself - judge with
separated, and a case to move awarded. The
Court can't infer matters of fact - that is the jury
and duty of the jury.

So it is true as the jury should find demand
and refusal and not conversion, the Court can't
pronounce judgment for the conversion is the
gist of the note and demand and refusal are
only evidence of conversion. To be sure it is
sufficient to find that Doft sent it, or took it
by force or the like for there is no doubt of
conversion.

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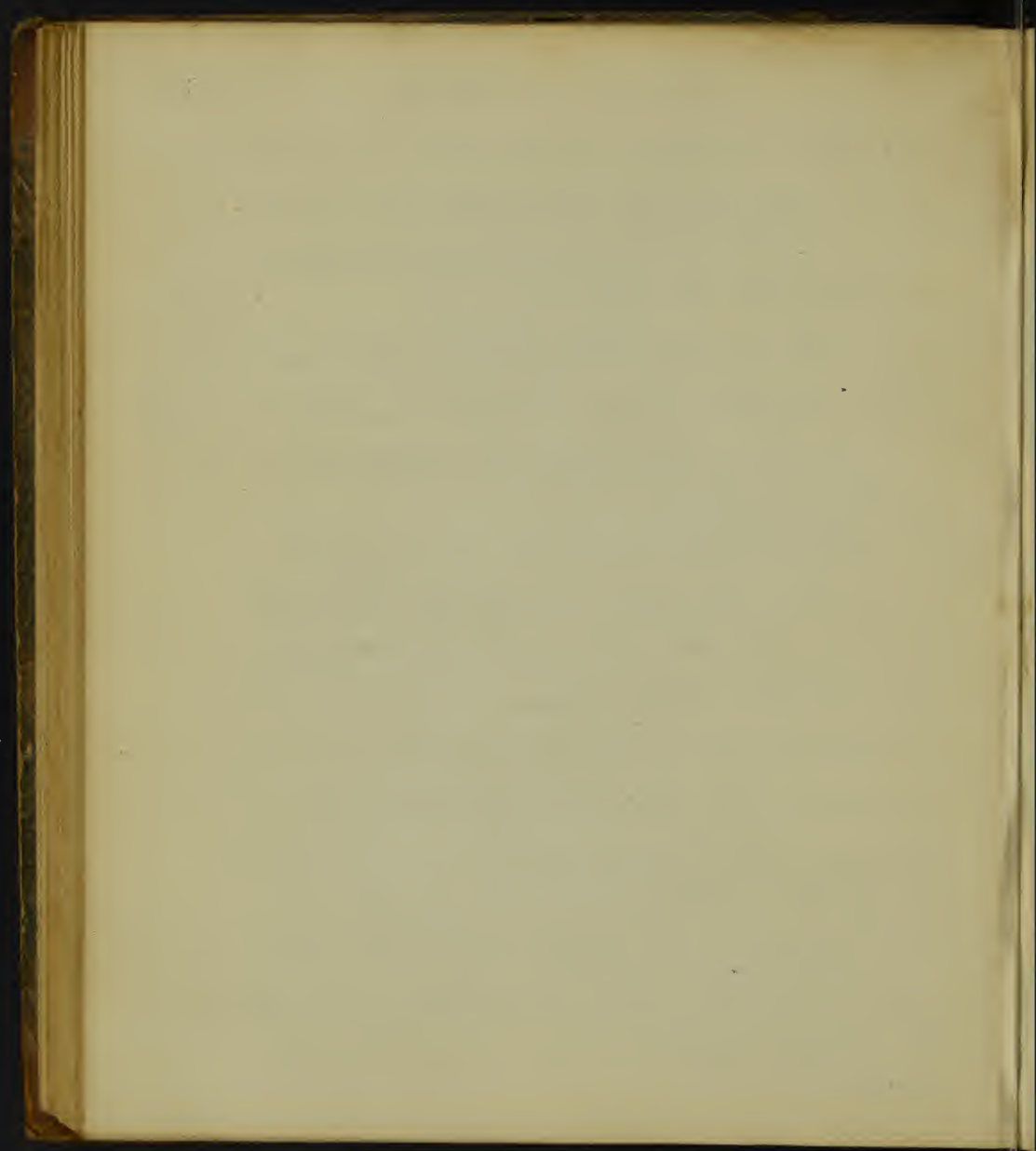
Now there are cases in which the justice of a high
 any stranger will say a few dollars for a motion
 in court. Is it the practice in one jurisdiction?
 No, not on one the other side.

106231
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 May 36.

Now if they find a great credit and
 either a stranger judge it will be arrested - for
 it don't appear that they were arrested who 44
 on the great court.

And yet such a declaration would be good
 to determine the other credit judge. It would be
 arrested - but then don't contradict the rule
 that whatever defect is ground of an arrest
 of judgment was the fault as would be had in
 the course. For that rule relates to rules in
 pleadings. But here judge is arrested because
 of a defect in the credit. Clearly there is a
 case of motion in the history of the movement in
 past. It will not be true to say however that
 the stranger might have been stopped after
 entry.

106231



That if the first damages are ascribed to the second
and counts the 1st may release them so
that if one and like judgment be there ascribed
to the good one there is a release in respect?

That the count of the 1st is charged with calling
the 2nd a brief and in the second with calling
the 1st a brief and general damages ascribed

the 1st may release the damages in the
second count.

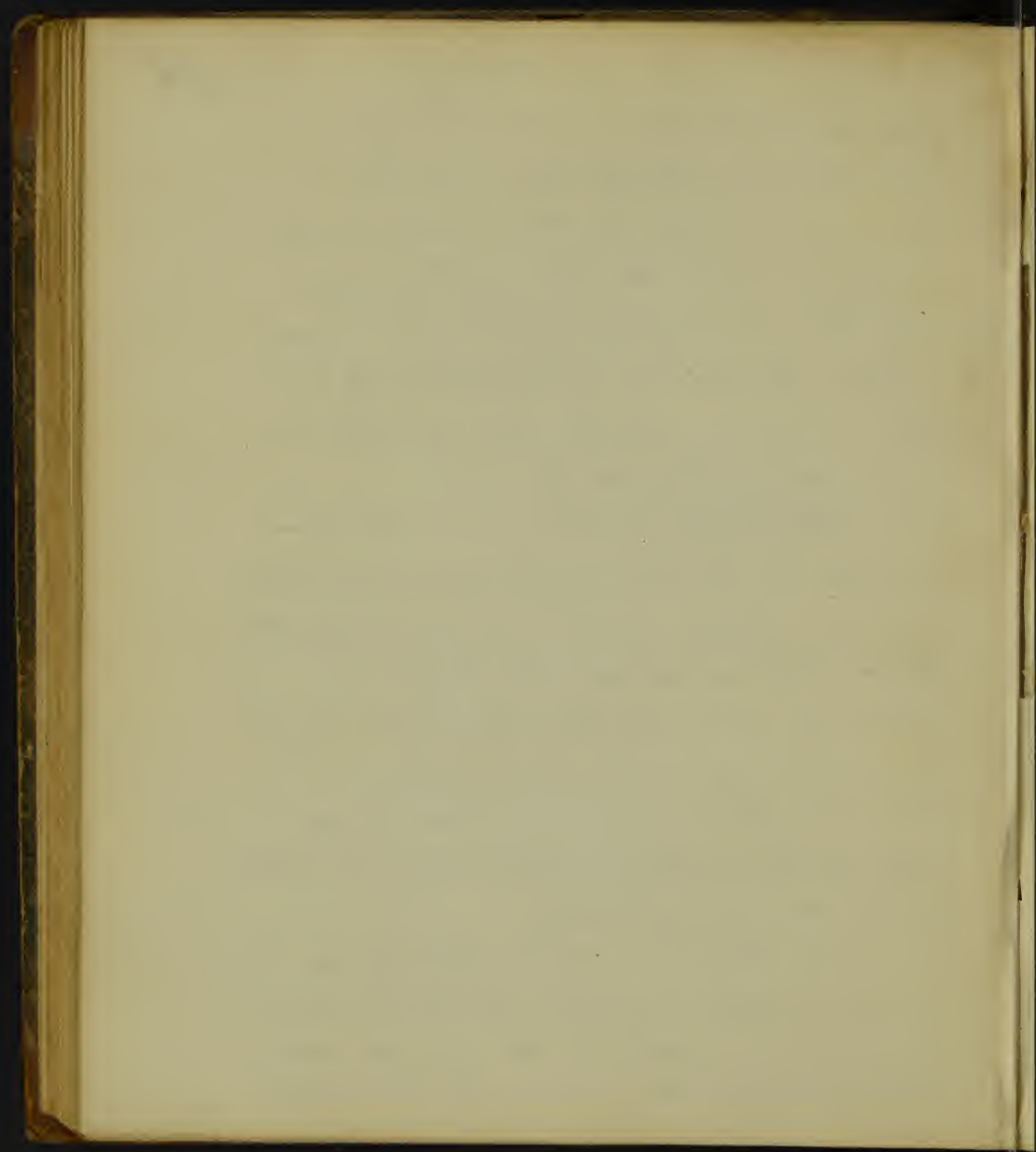
And the 1st

And the entire damages are ascribed yet
if the second was not ascribed to the 1st count,
the 1st may be ascribed by the count from
the judges notes is as to be in judgment on the
good count only.

It must appear to be a judgment on the
good count only the other evidence is as to be
of the judges notes is as to be in judgment on the
good count only.

And the 1st
the 2nd
the 3rd

This rule as to the two counts is not of use
in count 1. but is generally charge in one
count - the in case of Plauder - Japan. It is however



is that they give their verdict in that which is
 sufficient.

Nov. 1844
 1845

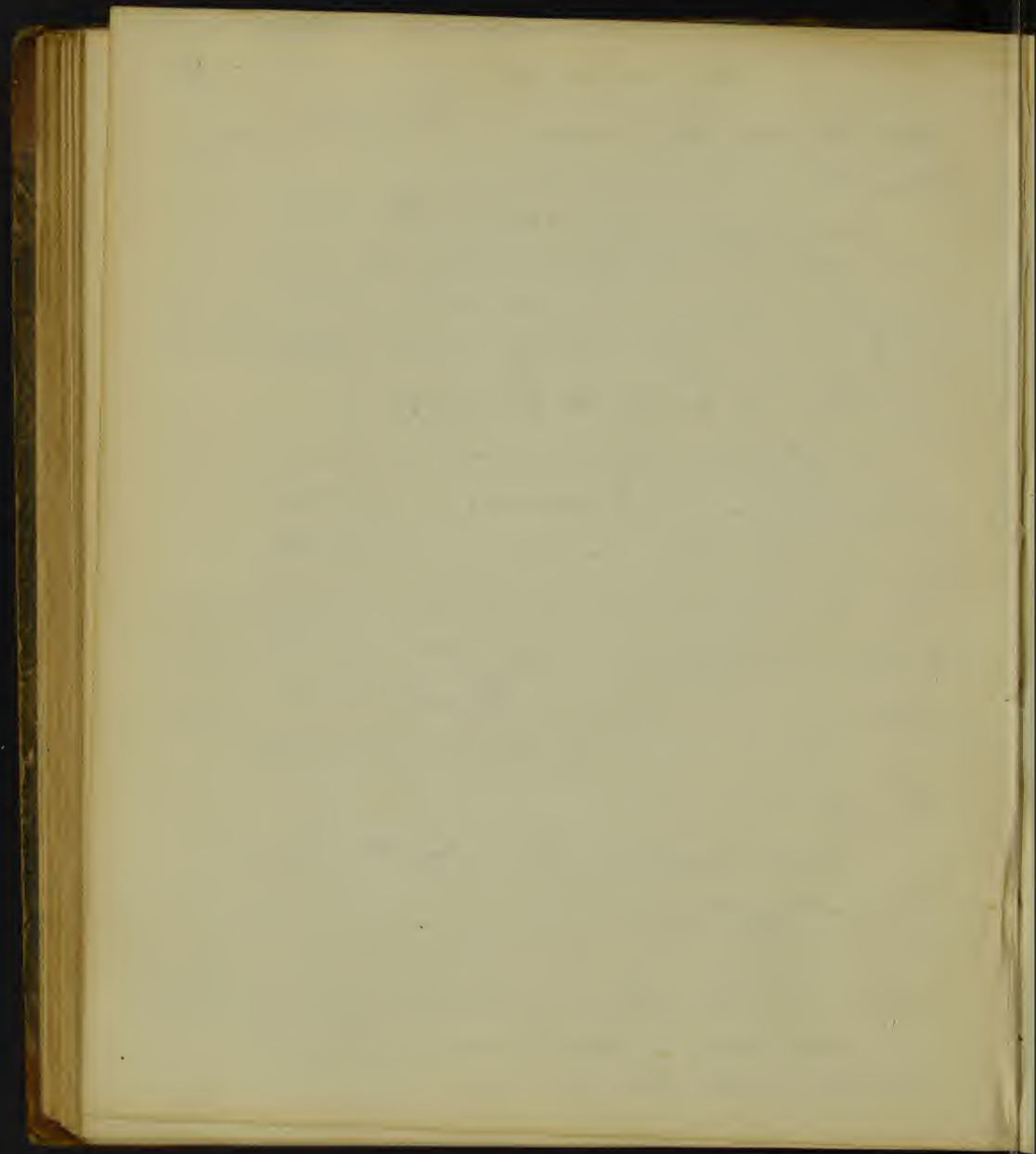
When judgment is rendered in these cases
 whether for a criminal or otherwise, or
 to remove the case is awarded, not a copy of the
 law for the party is kept a copy, and a release. B.A. 1844
 is intended to correct the pleadings.

But the same paper is used, and does not
 differ in criminal proceedings, for if of two
 copies in the latter case, one is given and the
 other left. Still judgment will not be awarded, for
 the jury does not attend the punishment. The
 judge can render judgment on the good and
 only. There is no occasion therefore in awarding
 the jury etc.

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As I have mentioned that in England the manner
 of receiving judgment are intrinsic. But in
 Court judgment may be awarded for extrinsic
 causes - is corruption or misconduct of judge
 or taking advice of third persons, 'indignity'
 induced by the East of a die.

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Intervention of the parties cannot, the jury
is also a case of intervention judge of the
Incompetent party under the jury. And
the is case for the jury and a verdict is to be
made. (Part 133)
and 140

Is if the jury is interested in a verdict re-
lated to the party as to be agreed, for a
principal challenge - but it may be waived.

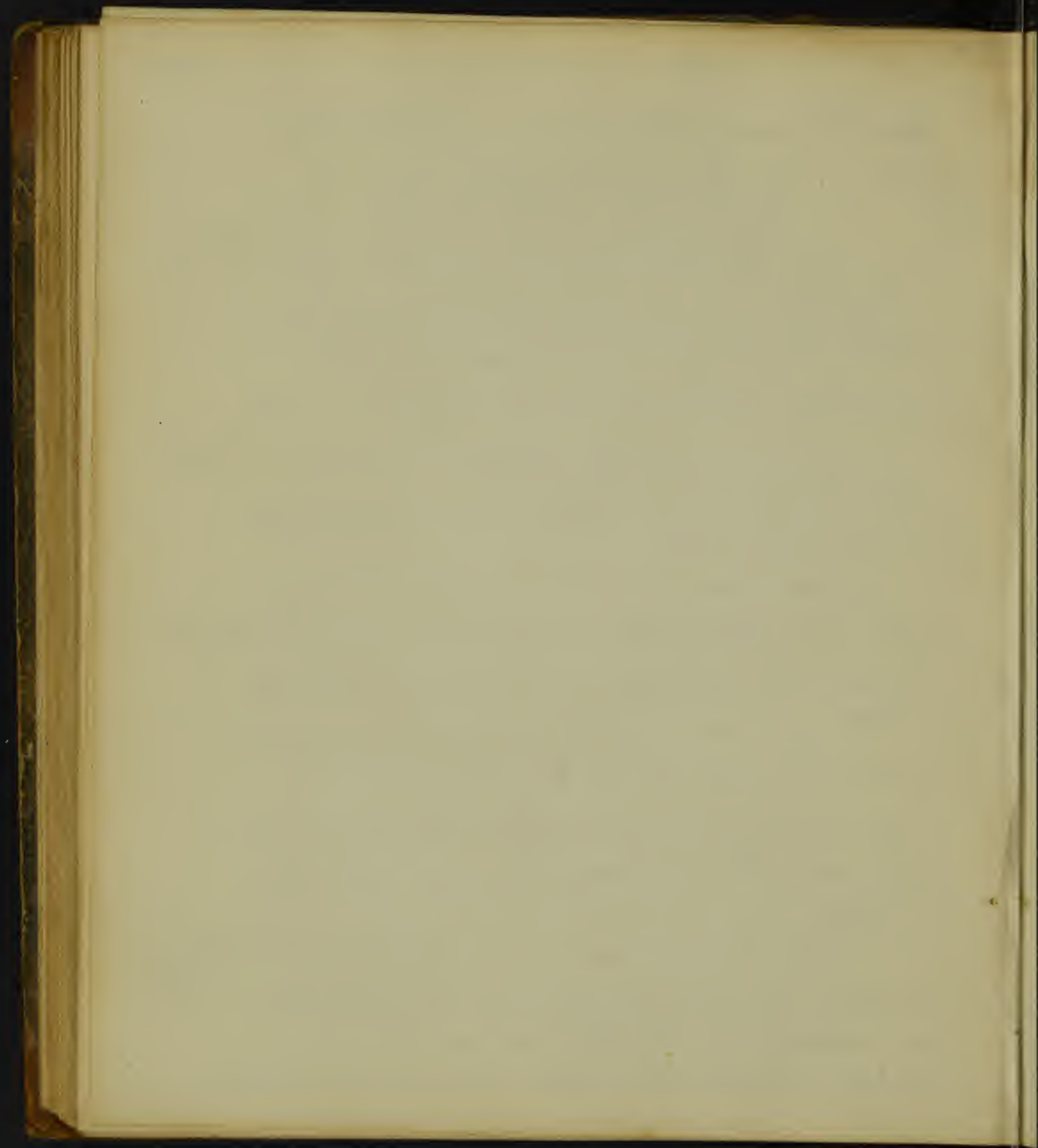
And if he is not, it is related to the fact July 15/14
12/14
of the party as to be a ground of such challenge
in case for a verdict.

Another cause in court is a juror having
before been a mediator in the same cause, or July 16
has given an opinion, or has been an attorney.

The rule here is, that the incompetency goes
to the impartiality of the juror, and must be
a good cause for a principal challenge, to
give cause for arresting the jury before the
verdict.

The presumption is, he will be biased. July 13
17/3
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At least by friends of opinion - as if he has
been attorney in the same cause.

But an incompetency to bias is no presumption.

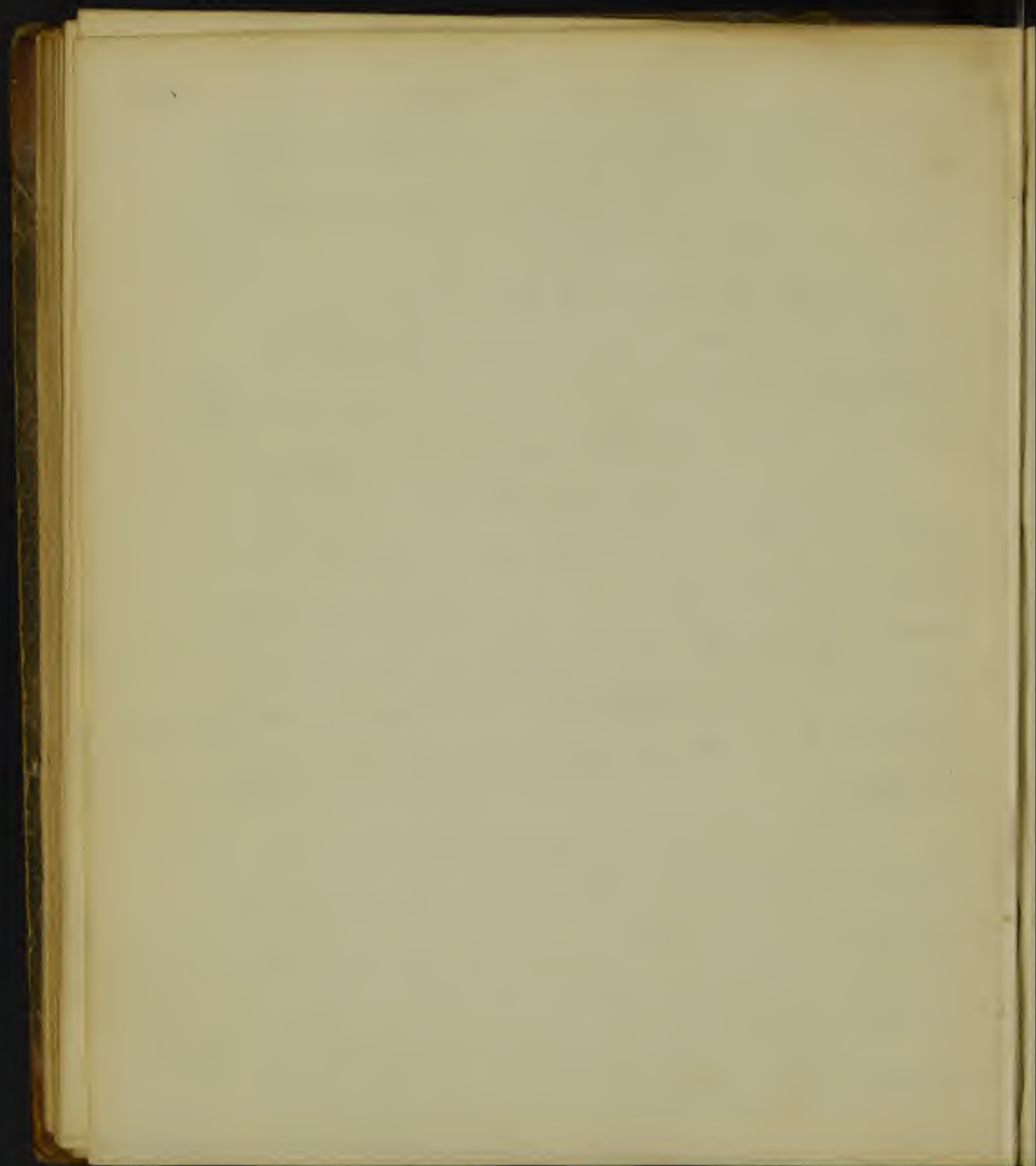


of partiality in justice is no cause for arresting
judgment. The it may be grounds for principal
challenge. *Ex. Grant of peremptory.*

But then the it goes to his partiality, yet
if the party knew it is scarce to make the
challenge, it shall not be moved in arrest *2 L. R. 233
July 169.*
of judgment. For thus waives the exception.

So if one of the jurors has before tried the
cause in the court below, this is ground for a
peremptory challenge - yet it is not ground of
arrest for as the names of jurors are on re-
cord they are supposed to be known to the misrepre-
sented. So he should have availed himself
of before.

A peremptory challenge given by a juror on
the ground of his partiality of law is not a ground
of arrest or of challenge - for if expressing his
opinion would be ground of objection, then
would in maintaining it - it will amount to an
-cluded *July 169.*

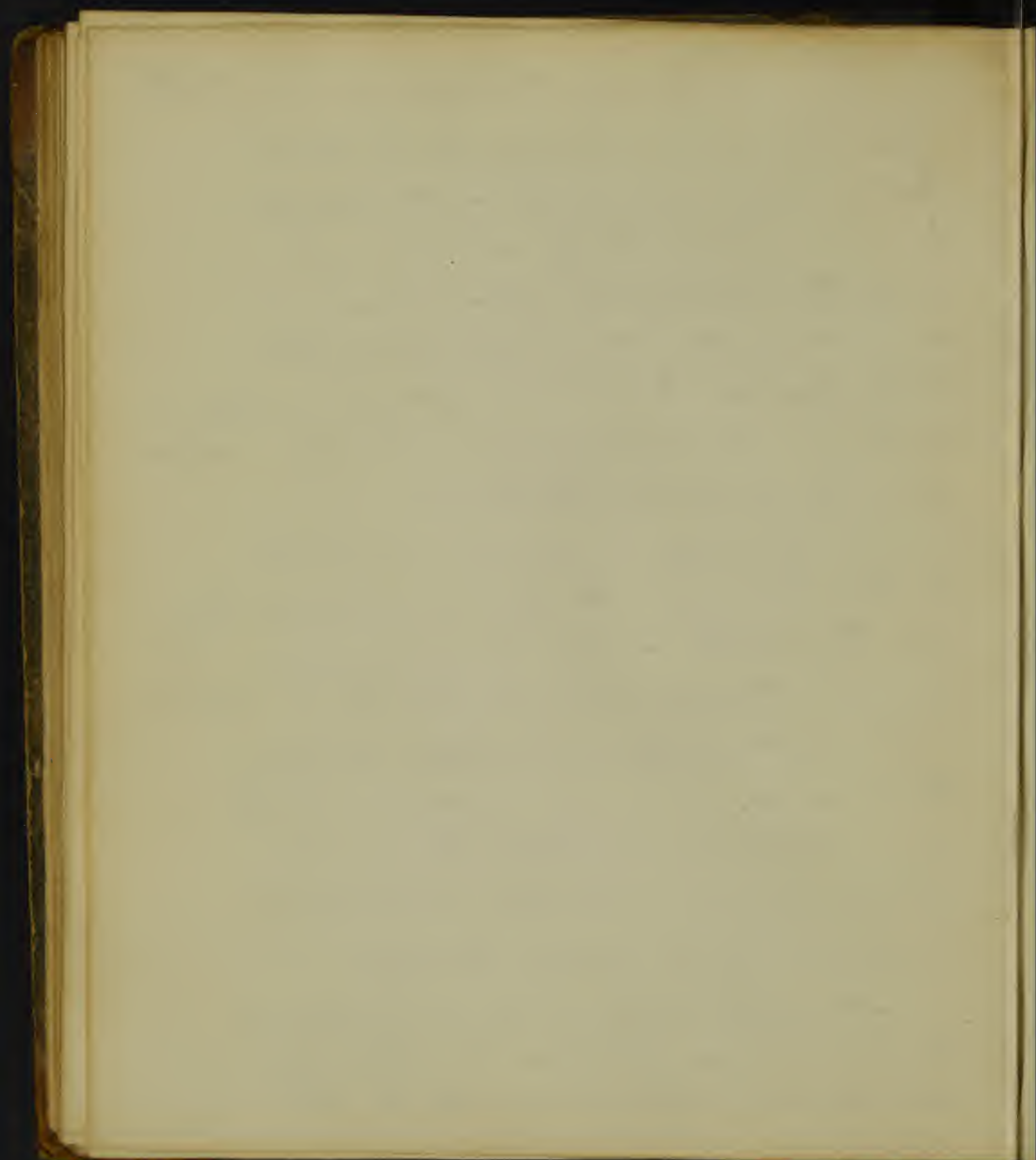


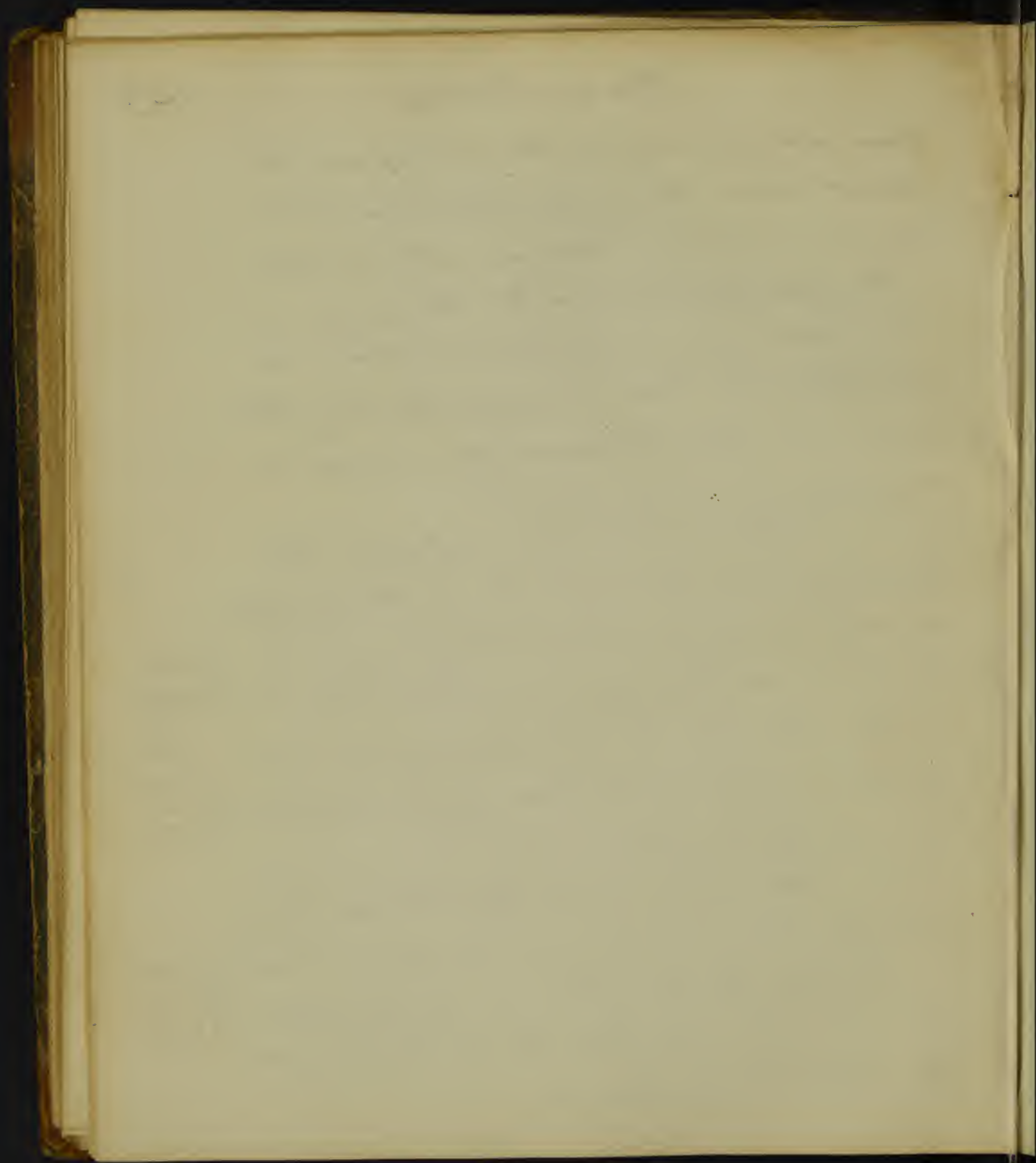
And it has been decided by superior court
that if the previous opinion on the merits of
the cause appears clearly not to have influ-
enced the verdict given it is not ground
for arrest of judgment. So if he says that
he has forgotten that he has expressed such
an opinion. This is pretty vague. I rather
doubt the soundness of that decision.

That the judgment may have been reversed
for this cause yet the court can never go
into the evidence on which the verdict was
based - the jury is to judge of evidence.

He 2 Scott 264 there is a mistake - he says
that an action is arrest for misdirection of the
jury a rehearing is awarded. This is not true,
a venire de novo is awarded, but a rehearing
is awarded only for defect in pleadings.

As the in error judgment can be reversed only
in intrinsic causes, yet it is true that there
as in correct judgments are arrested for other





The usual way is to file a motion for a new trial.

1882

On judgment being arrested no costs are regularly allowed on either side, for the prevailing party might have demurred and then recovered his costs by J. Beckett's want of judgment.

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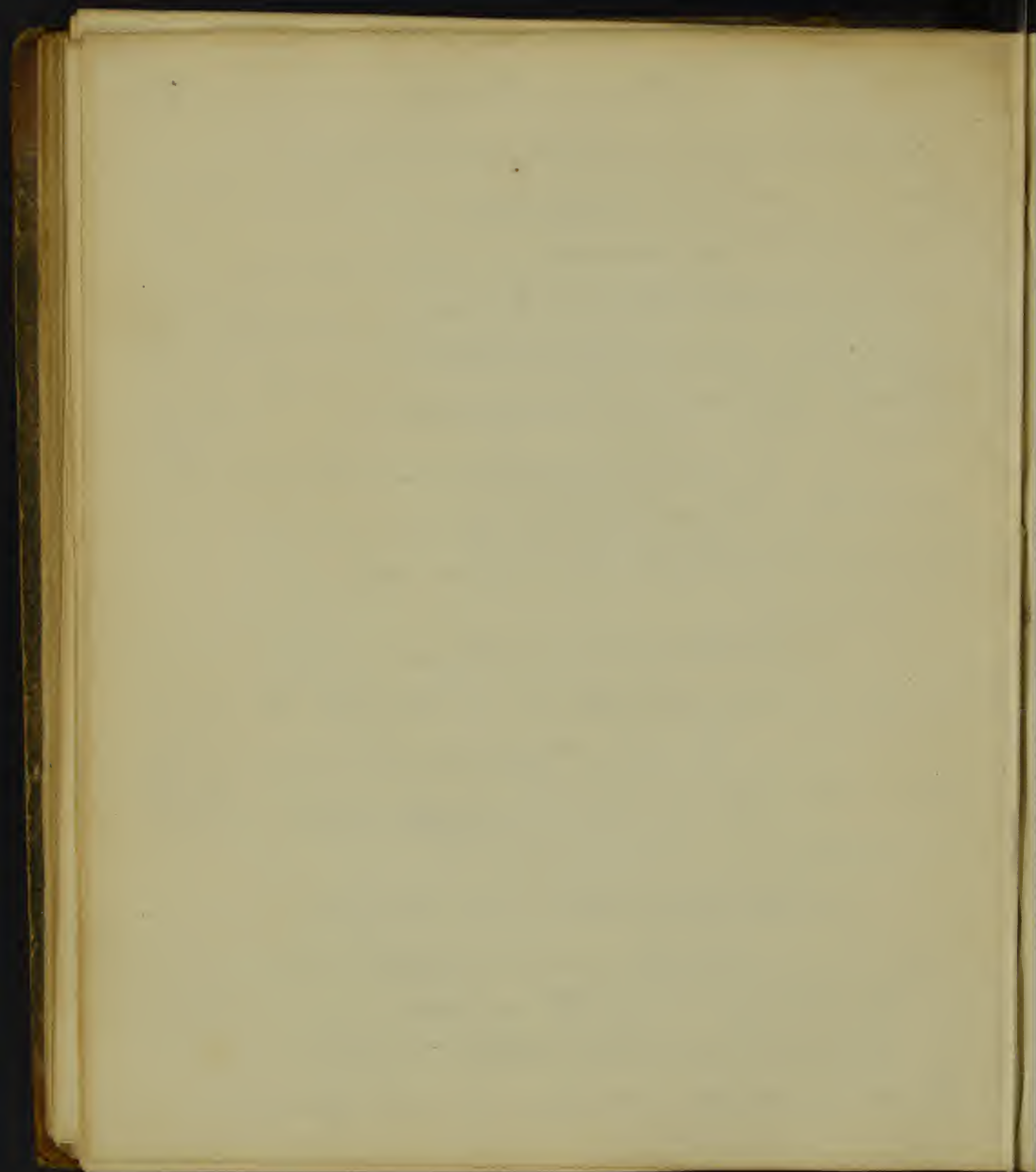
And if the motion is granted is overruled and then error is brought and recovery had, yet no cost shall be recovered for not even those incurred before.

So if demurrer is a sufficient motion in arrest fails and then error is brought. The reason here is the defect ought to have been taken advantage of in an earlier stage of the proceedings.

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But this does not obtain in demurrer where judgment is arrested for causes not appearing in the pleadings as in the verdict.

The same reason does not apply as above for the misbehavior of the jury or party can



How are Hearings

145

be taken advantage of in an earlier stage.

Feb. 6/92

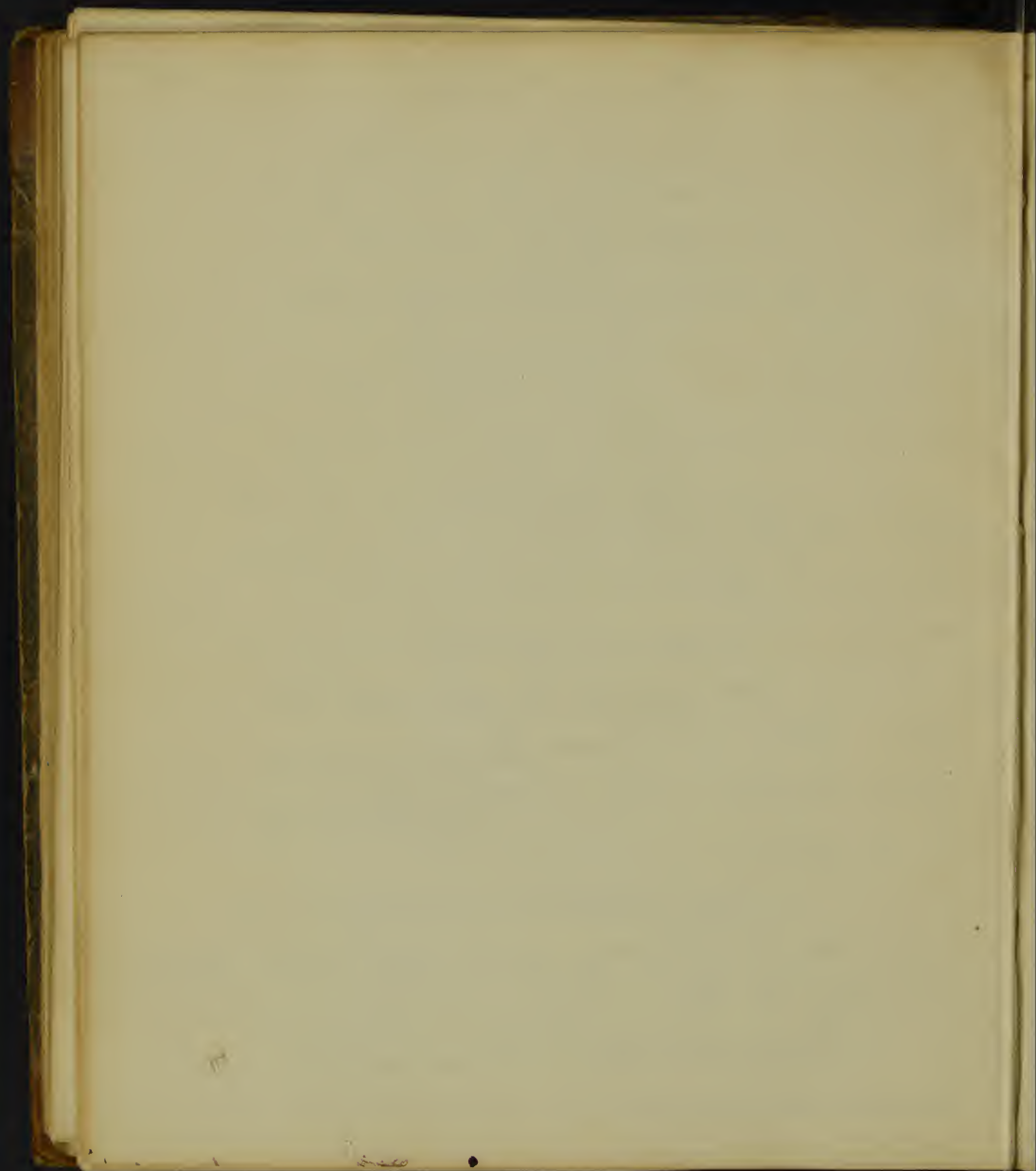
Does the rule hold in connection with the
opportunity is given by court, for under such
show to the court in objection may be taken
to advantage in a later stage.

Further in connection in this case there can
be by our practice no motion in arrest of
judgment. Advantage must be taken in connection
under the issue. This is usual. I think however
to incorrect. The court reserves judgment -
directly - so no opportunity to move in arrest.

to advantage ought to be taken under the
issue. I have no doubt the court would
keep the fact and law distinct if the party
should request it.

In May? Arrestions in connection made
within the four first days of the term next -
succeeding the trial - they are made in bank.

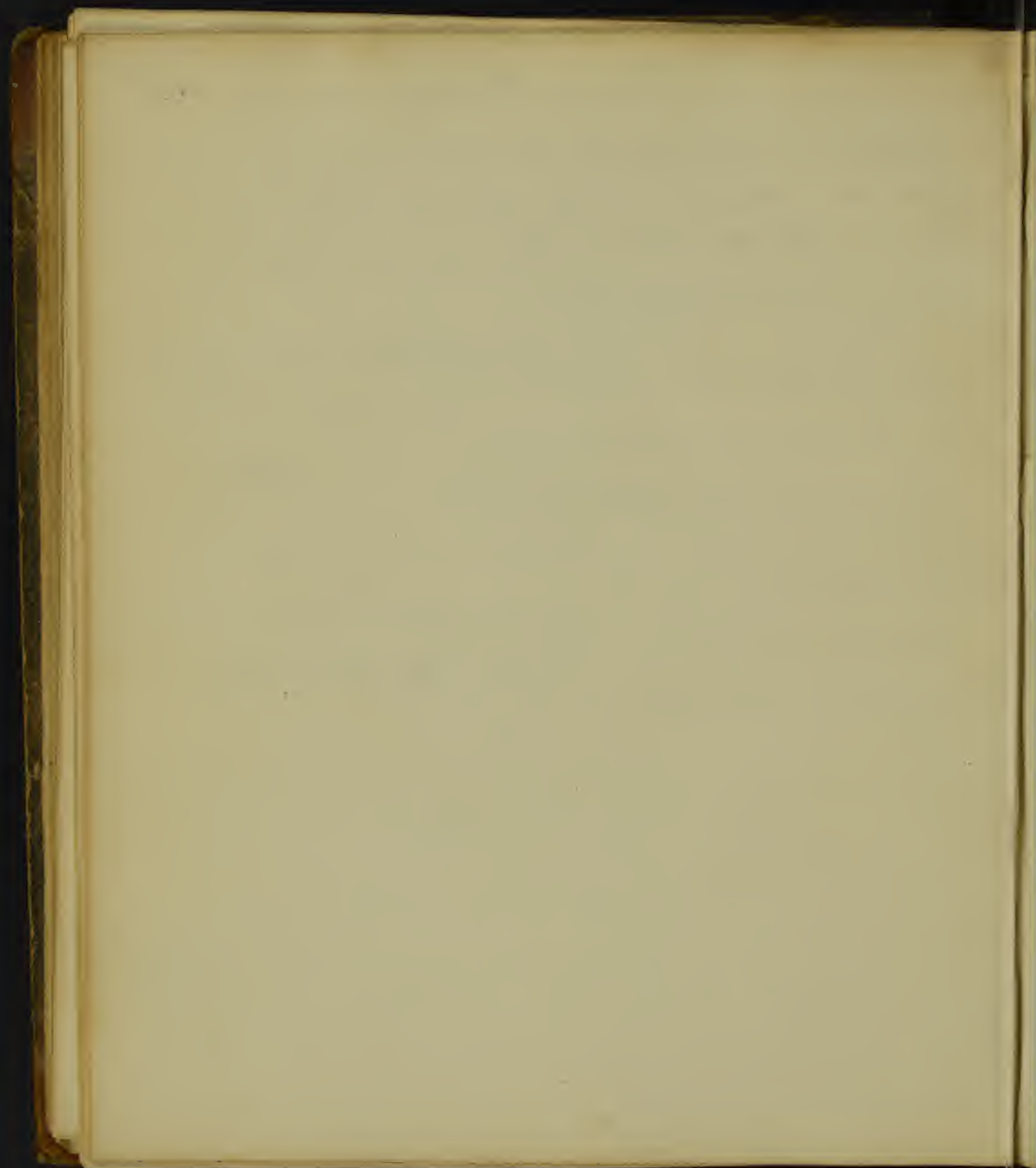
In connection motion in arrest must be
made on the subject being detained and



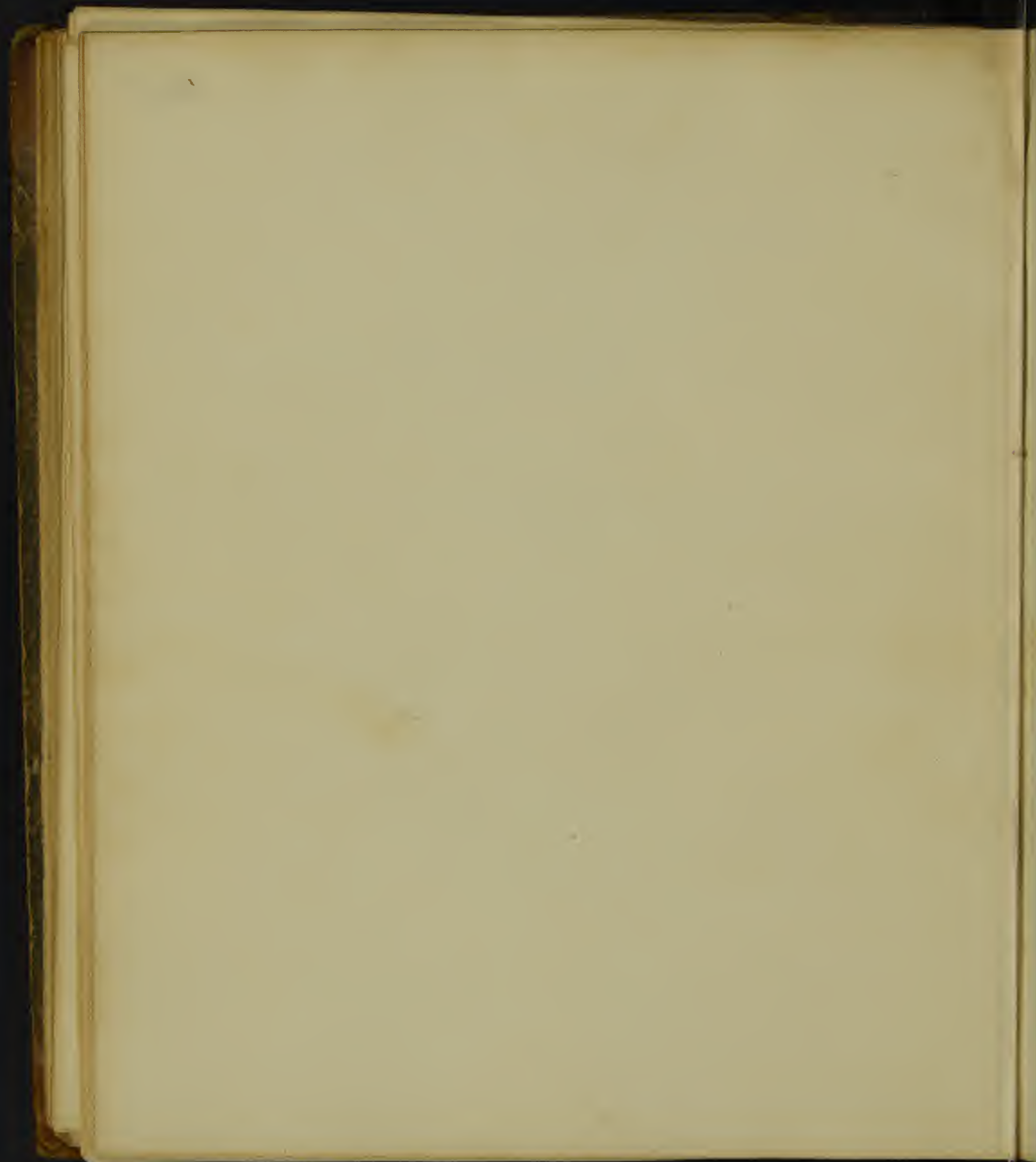
accepted. It must also be reduced to writing
and then delivered to the adverse party, or
lodged with the clerk within 24 hours after
verdict, commencing Tuesday.

It must be so delivered before the term closes ^{not 24}
even tho there are not 24 hours remaining. ^{Friday 22nd}

The form of a motion to arrest is thus - Left
after verdict and before jury at 2nd door
appears in court and moves and says the
court that no jury at may be rendered on
said verdict because he says Puff declaration
is insufficient in law. —



1217



New Trials.

Feb 18

An application for a new trial is always upon motion in a rule to show cause why the motion should not be granted & in this case it is to show why a new trial should not be granted. If the motion is made to show cause is granted judgment is suspended - But suspending judgment is not granting a new trial. The reasons for a new trial are discussed in Banks and showing cause is not granting a new trial. A new trial is granted by making the rule absolute, and is discharged by refusing to make it thus absolute. The motion only suspends the judgment and prevents its being entered up. If the rule is discharged judgment is entered up - If not discharged then a new trial is ordered and judgment is not entered up till a new verdict is had.

§ 63 application for new trial by motion is always to be made at any time before judgment - but is not granted afterwards. Long 760

In some of our applications for new trials are petitionary, and when they are always after judgment is the usual mode. & the petition is at the next assizes term. This is now the only mode in the County Court - reason why by petition is that formerly courts had no power to grant new trials - application was made to the Legislature, and then must be by petition and after the Act gave the courts power to grant them, application continued to be made as before. Statute 28.

It seems however that new trials might have been had on motion after the

that was made as by petition. Stat. 168.

I conclude then that the court might now do it - nothing opposes it but usage. But now in consequence of a new rule of Sup^r court, new trials may be obtained in that court on motion in a certain class of cases viz - where objection to the verdict might have been taken by Bill of Exceptions. This was in pursuance of Stat. enabling the court to make proper rules of practice as they thought fit. They determined that a Bill of Exceptions should not be signed in that court, and so advantage may be taken by motion for new trial.

Formerly no time was limited within which a petition for a new trial was to be brought - since 1814. now it must be by Stat. within 3 years after the trial. Stat. 1814. c. 75.

2. Bag the motion is to be made within the four first days of the term next after the trial is had.

In common law application may be made after judgment and within three years after trial. But where application is by it must be before judgment is rendered.

The petitions in common law state the grounds of the application just as in any other petition - The opposite party may demur, or deny it, or treat it just as he would a declaration. The court must set aside a judgment merely because the party defended improperly against the application for new trial.

If there is a demurrer and it is overruled, still there must be a hearing on the writ. In bringing the petition is no supersedeas. It does not suspend the judgment to the other party may proceed - it does not stay the execution. Indeed

granting it does operate as a supersedeas, but not merely preventing it.

An application for new trial is, according to the general rule, an appeal to the discretion of the Court. So the claim of the party applying is not stricti juris.

So new trials will not be granted when justice has clearly been done, nor where the claim is hard or unconscientious - So I suppose in case of wrong, the 9 hours of no fact case.

So if it appears that the damages to which the applicant is entitled are very small - still they won't grant a new trial. So if he is entitled to nominal damages only, the court won't in the exercise of their discretion minister to the evil propensities of men. 3 Bl 391. 32. 1808 & 3 Bl 338. 2 Bl 4.

1608 206.7. 1 Bl 644. 3 East 455.

But as to discretionary the court in granting it can impose conditions or terms to be performed by the party, for the claimant is not entitled stricti juris. So they may compel the applicant to disclose and swear any facts relative to the cause. So also they will require him to enter into a rule to admit certain facts of which there is no doubt - as where it is difficult to bring up the witnesses at a future period.

So they may compel the production of books or papers - nor menants of his own right - Indeed any thing that is reasonable they will compel him to do.

So examination of witnesses as he are infirm, or going abroad - the generally that can be had only by going to Chancery. In this case a court of law requires it. 1 Bl 648. In 1608 if the ground of the application is any thing which looks

place at the trial, the information on which the court is to act is to be taken from the judges reports of the case. But if the ground is not any ^{thing} that took place at the trial the information is to be disclosed by affidavit. 386. 341
1255. 2 Dec 146.

This does not apply in the court of Common Pleas in Connec. for the motion is before the same court that tried the case the first time.

Whereas in Eng^d the trial is at Assi Piers and then the motion is tried before the court at Westminster i.e. is to be tried in Bank - so information is necessary.

Before the Sup^r court in this State it may apply in some cases viz. where the question is reserved for the 6 judges having been tried by three the first time, then the necessity to inform the other 6 judges, and this is done by a statement in writing, and signed by the presiding judge.

As a general rule that Court is not predicible of the decision of the court in granting or refusing a new trial, yet in some cases too predicible as where a new trial is granted in a case in which the court refused to grant it in any circumstances - it would be error - no such case has happened in England.

Thus before a man to be prosecuted for Felony and acquitted is then on new trial convicted it would be error no doubt - to refuse refusing new trial is never error, but granting it is in some cases. Thilly 41.

A new trial in Connec. is never grantable by a single minister of the law, for by Stat it extends only to Sup^r and County courts. Stat law 8 Thilly 9.

As to the origin and antiquity of granting new trials there are different opinions. Blackstone says they were allowed in the time of Edward 3. (tho' my not till Hen. 6th time (1465) In the reign of Edw. 3. new trials were granted for misbehaviour of jurors. And in Hen. 6th time the case was one of a captive. Hen. 6th, as affording evidence of misbehaviour. to be that time misbehaviour was the only cause, & ours of late, as vide *infra*. 5 Bl. 557. See pp. 1. R. Wm. 3. 13. 16th Ed. 3. 10m 394. 3 TR 131.

Lately new trials have been granted in Eng^d after a trial at Bar. i.e. upon trial at Westminster before the court in Bank. Some formerly, for said that the application was before the same court which had decided the jury. But that reason was not sufficient, for it did not apply to the case of misconduct of jury, or of one of the four judges in Bank - so now settled otherwise.

Special permission of the court - grounds are, the probable importance, the probable length & difficulty of the case. Long 420. 10m 395. 20th Ed. 1960. Ringe 585. 1105.

Strong in general is now a rule that a new trial may be granted in all cases of sufficient importance, if it appears that injustice was done at the first trial, yet principles of policy often interfere and prevent their being granted even in case of injustice; as where oblige is sued and having lost his receipt, recovery is had - he afterwards finds it, yet no new trial is

granted - this is expressly decided. It would encourage men to hunt up
 precedents. 3 B.C. 388. 1 Burr 395. 6 R. 638. In last case grant a new trial in one case.

If the case is of small importance, new trials will not in general be
 granted. 4 B. & C. 203. 1 Burr 12. 395. 665. 4 R. 756.

The Eng^l general rule it seems that a motion for a new trial may not
 be made after motion in arrest of judgment, unless indeed it appears
 that the ground of motion for new trial was unknown at the time of
 moving in arrest of judgment. I see no reason for this rule. Indeed there
 are reasons for a different rule. Indeed I think the motion in arrest
 ought to be tried first - for why grant a new trial if judgment can be
 entered. 3 B. & C. 203. 1 Burr 12. 395.

It has been held that where there are several defendants and all are convicted,
 or some acquitted, and some convicted - no new trial can be granted
 as to any one unless all join in motion for it, for so said the judge. must
show a fall in toto. This is very obviously calculated to work injustice,
 for suppose one acquitted and the other convicted yet no new trial can be had
 however strong the reason for the person acquitted has no reason for asking
 a new trial. 3 B. & C. 302. 3 B. & C. 609. 12 R. 275. 12 R. 274. 3 B. & C. 226. 6 R. 635.
 Indeed in one case the rule is denied - so may be granted now as settled in
 3 R. 638.

Causes for granting new trials.

Want of legal notice to the

Def't a good name for new trial - It is Eng^d in civil actions 15 days before day of trial. ⁹ Comment on county courts, and in some cases 14. days if he is a defendant, for this reason the defect of notice he waives the objection by defending. alt 646. 435. 324. 327.

As I think is the case when the court exercise discretion, for perhaps no notice given at all and judge ^{at} against him, and the same a small one, yet he is entitled to a new trial, he has a right to be heard, he has had a trial say they could not refuse it - the it was a case of wrong. If they do refuse indeed, there is no remedy - It can't be brought into view in another court, any more than a deviation from the rules of practice can.

2064 New trials may be granted for defect or mistake of the judge, before whom judgment was obtained. As if incompetent through interest, this is a defect - or if he admits improper evidence, or excludes proper evidence, or misdirects the jury in a point of law - these are mistakes. 11 Mod. 117. 1200 202. 422 758. B. & P. 327. 5 B. & P. 244.

Thus if evidence being objected to and being improper is admitted, the this is ground for new trial - (It is a note that the incompetency of a witness, the not known at the trial) if not objected to, is not of itself ground for new trial, yet it may have its weight among other things. 12 R. 758.

The Court, Sup^r Court in 1796 granted a new trial on this sole ground, even tho the evidence was written - & this is stronger than if it was parol.

1840
The first of the year
was a very cold one
and the snow lay
on the ground for
several days.
The weather was
very disagreeable
and the people
were much
convinced of the
necessity of
clothing.
The first of the
year was a very
cold one and the
snow lay on the
ground for several
days. The weather
was very disagreeable
and the people were
much convinced of
the necessity of
clothing.

Samuel is Lambert, August term.

3rd Defects or incompetency in the jury or jurors are good causes for new trial. Defects and incompetency here mean the same thing. But if the incompetency was such as ought have been ground for challenge and the fact was known in season to take advantage of it in that way, it will not be ground for new trial - even if not known in season to challenge. In *Case in Miles* a new trial was refused, but because the incompetency was known at the time of trial. 5 Bac 245. 7 mod 54. 10 ant 30. Miles 174.

In such cases in Connecticut in a court of judgment is concurrent with granting a new trial. The 3rd is generally taken advantage of by new trial.

4th To the misconduct of the jury - as partiality, inattention or the like is ground of new trial. So if they refer the decision to a game of chance. Indeed any thing that prevents fairness of trial is ground of new trial. 1 Ma 642. Bunting 51. 2 Dec 140. 5 Bac 250. 288.

It is not necessary that all the jurors have been guilty of misbehavior - misbehavior in one is sufficient - so where the foreman had said that if you never have a verdict let him produce what evidence he would. Talk 645.

But the misbehavior of one is sufficient to vitiate the verdict, for unanimity is necessary in a jury. In early times perfect

unanimity in the jury was not required, but for a long time past it has been both in this country, and England. 3 B. & 375.

If they don't agree the jury are carried round with the court, till they do. This has never obtained in this State, and not necessary to be used in Eng^d for the danger of incumbering it, induces unanimity. If not unanimous then the verdict is bad, and must be set aside. As if verdict of eleven is bad, it must at least be that of all the jury.

But an expedient has been resorted to to evade the rigour of the rule, viz. by letting the minority come in silent and acquiesce in the verdict, and it stands unless they dissent, and the law will not suffer them to certify their dissent after the verdict is recorded. Comb. 4. 5 Dec 257.
291. Kay 141. 216. 2 Str. 263.

In Eng^d the jury when retired to agree in a verdict are locked up — eating or drinking before the verdict is delivered to the judge is misbehaviour. This is to compel them to an agreement.

If the verdict is not initiated by the jury's eating and drinking, it is only misbehaviour that renders them liable to be fined, it don't go to the fairness of the verdict. 1 Vent 125. 3 B. & 375. 12 Mod 111.
Do Ray 2149.

If they eat or drink at the expense of either of the parties &

the verdict is in favour of that party. The verdict is a good one that may be obtained. 1 Inst 272. 227. 1 Vent 125. 12 & 111.

But to relieve the jury from the hardship arising from the rule, as to abstinence from eating and drinking, they are allowed to give a jury verdict out of court. Prigge v. Dicks are delivered out of court to the judges but they are not binding and are not to be recorded; the jury may vary from it when they deliver their public verdict - it is only a mode of avoiding the rule, by complying with it formally. Mow v. W. Page 277. 3 B. & 377. 5 B. & 282.

The delivery of jury verdicts has this effect viz, if they eat or drink after delivering it, it don't vitiate their verdict, unless they afterwards change it in favour of that party who, procures the food. 1 Vent. 125. But jury verdicts are never allowed in cases of felony or in cases of life or limb - Indeed never when the personal appearance of the Def is necessary to his conviction i.e. to his sentence. Indeed I conclude when it operates in perjury, as in hipping and the like, it can't be given, for in such cases the personal appearance of the Def is necessary. Now where a mere fine is in question. Key 277. 1 Vent 277. 2 Noble 687. 697.

In such cases as these the jury must be confined till they agree.

In converse, jury verdicts are not necessary for the jury are never confined at all. This laxness is dangerous in cases when there is a possibility of bias. His rule in Langham's Rep. 147, that a jury may find a verdict on their own personal knowledge. This cannot be less. If he has any knowledge on the subject, he ought to make it known in open court and if not the verdict is bad. The reason is each party has a right to cross-examine and to meet any evidence by counter testimony. 3 B. & P. 12133.
5 B. & P. 259. 12. Mod. 238.

And in pursuance of the same principle the jury have no right to re-examine any witness after retiring - not even what he did testify in court, for he may not give a true answer - If they do thus examine his ground for a new trial. Co. & 411. 5 B. & P. 288.

And in Eng^l is a rule that the jury cannot take out any written evidence actually exhibited in open court without the consent of the parties or judges. Now say if the writing furnished evidence for both sides the verdict is good - this leaves the rule loose - it may be strong on one side and flight on the other. Indeed I think the party ought to have strict right to deliver to the jury the evidence which was exhibited in court, for they understand it better by perusing it. In converse the written evidence goes to the jury ^{as} matter of course. West 227. Co. & 411. 2. Hag. 148.
12. Mod. 256.

that if the jury take with them any written evidence not exhibited at the trial the verdict is bad here and in England a new trial must be granted. They have no right to found a verdict on evidence not exhibited in Court. See 20 Vin. 35

But the jurors mischievously vitiate the verdict yet they have no right to testify to the fact, seems formerly. I don't see the reason of this, for to impeach his own verdict don't prove perjury, but only proves a breach of a promising oath - an oath of office. In other cases a man may testify against himself if he will, but in this case he is not allowed to. 12 R. 11. Co. 8. 189. 5 Bac 288.

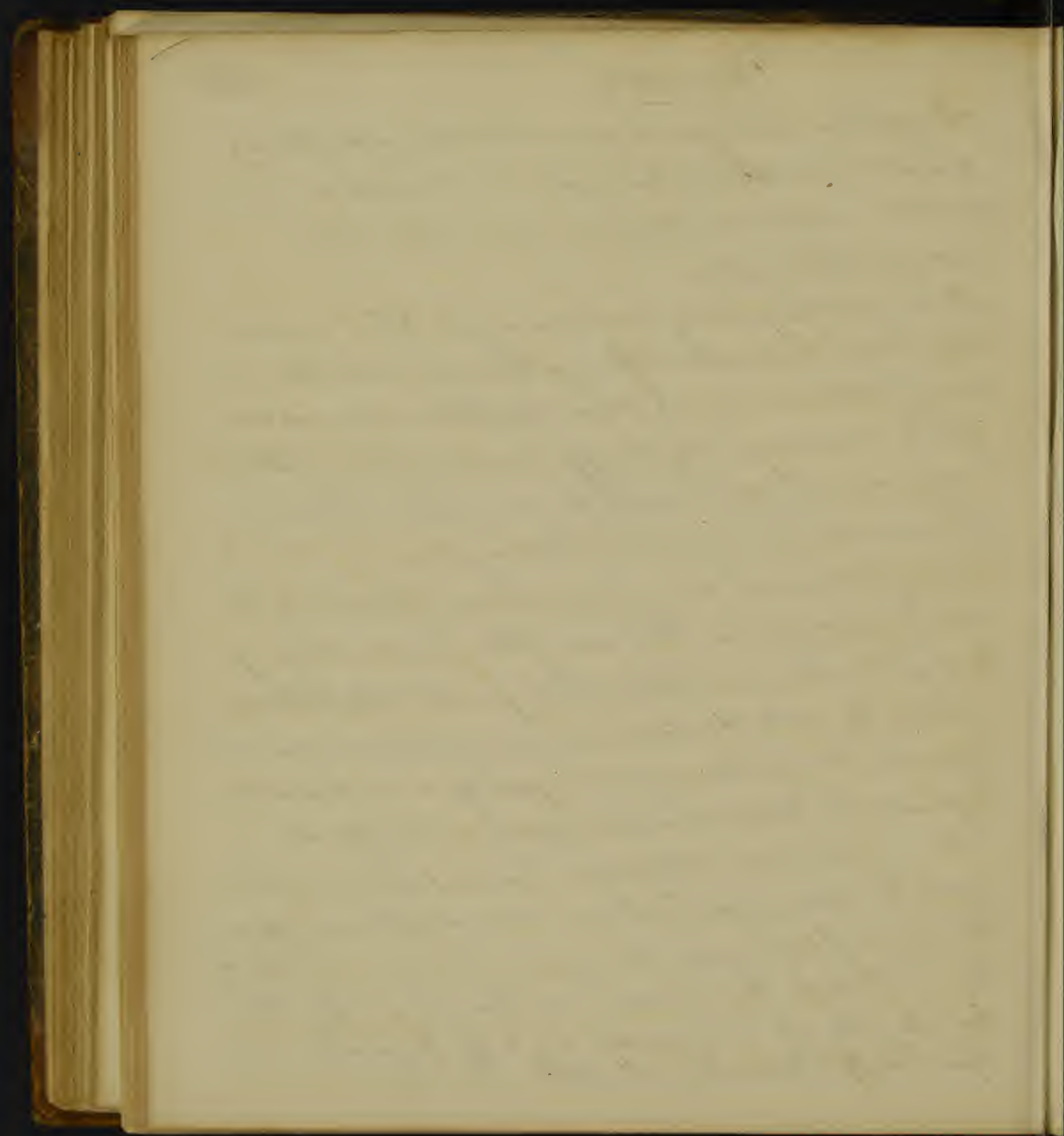
In all these cases inclusion in arrest of judgment are concurrent with new trials in Concord.

5^{thly} It may be a ground (tho not always) for new trial for the jury to find a general verdict when directed by the Court to find a special one. Reason for requiring special verdict is to let the Court have the naked facts that they may apply the law, yet this is not a misdirection and the jury can't be fined for it for they may find a general verdict if they please, is not illegal. But if they find the law as the Court think on the point of law, a new trial will not be granted. tho a general verdict was found when ordered to find a special one. so it seems tis the finding a verdict -

entirely to law that is ground of new trial and not the finding
 of general, when directed to find a special verdict. Now can a
 new trial be refused but that was after a trial at Bar.
 17. 11. 213. 5. Bac 251. 7. mod 37.

6th A verdict being contrary to evidence is ground for a new trial
 both in Eng^d and Connect. Swift says otherwise. Indeed there was
 formerly doubt about it - but now it is settled in Connecticut.
 Yet the courts being pretty strongly inclined in favour of the an-
 tiproper side will not be reason for a new trial. Indeed the
 rule used to be, that it must be so that no evidence be adduced,
 or none that amounts to any thing in favour of the party for
 whom the verdict is found. But now if the verdict is clearly ag-
 gainst the weight of evidence, a new trial will be granted. low. 37. Bell. 326. 7
 So when the scales of evidence are nearly balanced none will
 be granted, but when there is great inequality, a new trial will
 be granted tho there be some little evidence on the other side.

There has been much controversy on this point, for tis said the
 jury are the proper judges of evidence - tis said the court approve
 the province of the jury by allowing new trial here. But I think
 this is not true for they abstain from themselves to try the
 case, they only refer it to another jury to try the question over
 again. low. 37. 2. 1105. ¹¹⁴²₁₁₄₂ 3 B. 6. 392.



^{1st} Again if the jury have given a verdict ~~on~~ ⁱⁿ misconception
 a point of law or generally against law, a new trial may be obtained.
 it often happens when the jury find facts they make a wrong
 conclusion from them - so if an action ag. the indorser of a promissory
 note and no proof of notice having been given to the Def^t jury may
 testify to it if they find for Plff - Stark 646. Sta 445. 425. 2 BR 1178.
 Comb 402. 4 D R 479. 20 Reg 147. In some cases applications of this kind
 have been unsuccessful, but it was because the court were not satis-
 fied that this was the case.

But new trial will not be granted of course where the ground of
 the application is hard and unconscientious. If the court think
 substantial justice has been done none will be granted - so where the
 Plff is entitled only to nominal damages, but verdict is for the Def^t.
 5 Bac 146. 4 Burr 2093. 4 D R 758. 2 D R 5.

^{2^d} 3^d 4th In certain cases smallness of damages is a cause of new trial, but
 this ^{is good} cause only in actions in contracts where they are known and
 certain - no case when the action sounds in tort, and damages are
 presumptive in which new trial is granted - so if in an action on
 bond the jury should not make an allowance for interest, N. Trial
 would be granted. But in malicious prosecution, assault &c, no new
 trial is had, yet I should think in some hard cases N. Trial might

1

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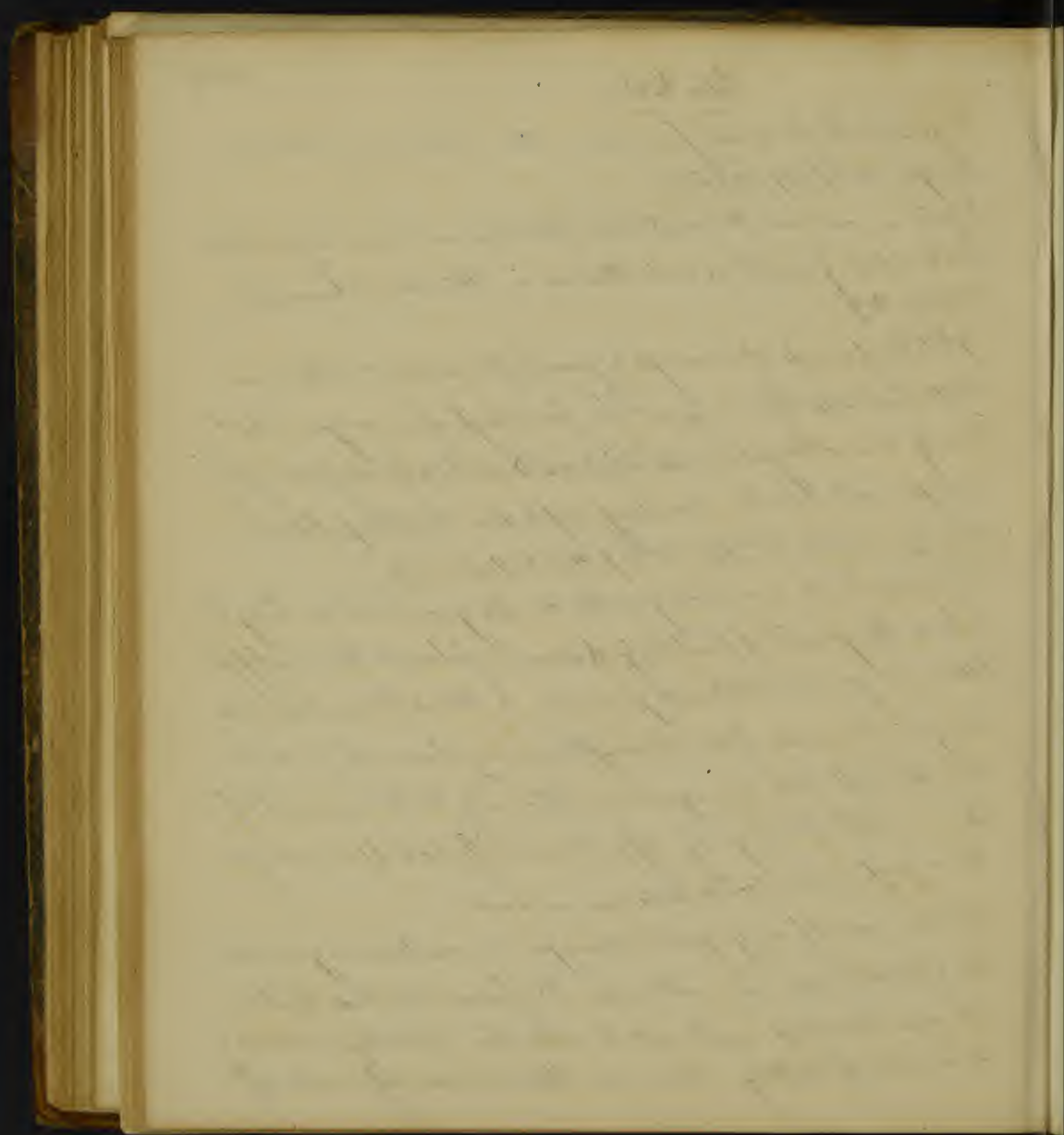
1840 the the action for a tort but none of this kind.
 the 9th. 3d P 327 42 R 65-3.

2d. In one case the court said there was no reason why a trial
 should not be granted as well then as in other cases. 2d. 1845. 1257.

3d. Excise of damages is ground for new trial both in con-
 tracts and torts. If so why not for smallness of damages. Indeed
 formerly it was thought no new trial could be had for excise of
 damages - but that has been long exploded. 3d. P 327 42 R 65-3.
 1846. 3d. 1346. 13 R 27. 5d. 1857. 470 657. 700 527.

When new trials were first granted on this ground 'twas thought
 to be on the ground of partiality presumed - but now this is not sup-
 ported, and yet new trials are granted. In Conner - new trial has
 been granted under these circumstances viz. A, owes B, for debt
 and told B that damages were laid only to the amount of
 \$50 - so B left it go by default and B took \$100 damages.
 This is excise and hence 'twas misconduct.

In some cases of very great damages, no new trial is granted.
 So in actions for crim. con. with wife - The opinion has been that in
 such cases new trial could not be obtained - But why not as well
 as in cases of Battery? To be sure there is more of a rule of



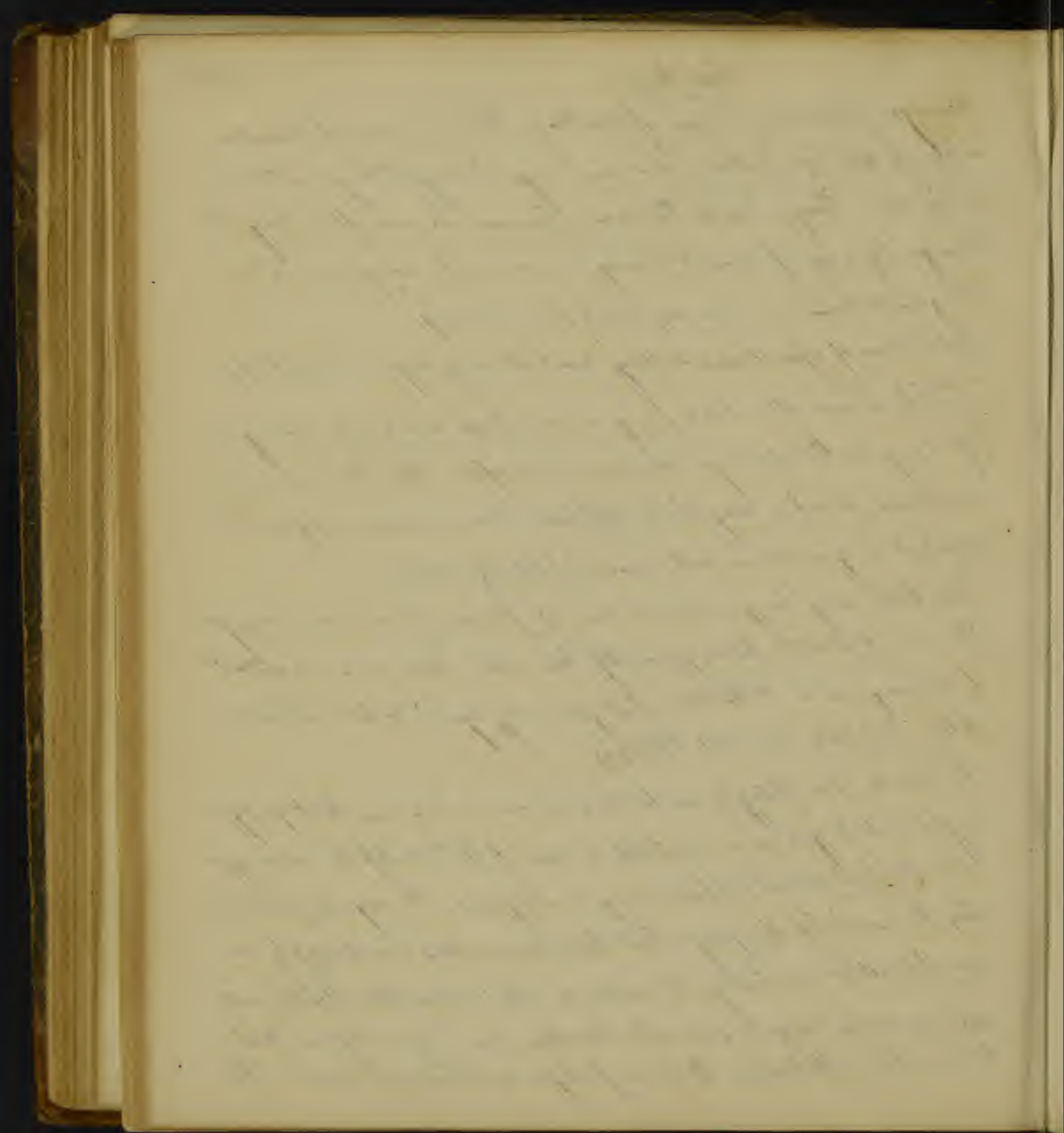
damages furnished in case of Battery than in case of Assault.
as to time &c. Batter in one case says it might be granted even
in this case. Haynes hints the same opinion. In case of Battery the
damages by way of smart money can never be excessive - his au-
thority as to time &c. 1 Burr 606. 2 D.R. 651. 5 D.R. 257.

But in cases of assault and battery new trial may be granted. 12 D.R. 277.
as do 257.

In cases of actions per quod secessionem amittit for injury to
Pp's daughter the damages can never be excessive. Here the same ob-
servations as supra might be applied. I see no reason why a trial
may not be granted in both cases. 2 D.R. 164. 3 D.R. 15.

New trials may be granted in case of slander for enormous damages.
The cases of Slander have generally been where there was misconduct
of the jury - so in titles 462 - but generally agreed to be as I have
stated. 10 D.R. 644. 1 Burr 394. 12 D.R. 277.

So Camden has strongly contended in one or two cases that judges
ought not to grant a new trial in case of tort, unless the damages
upon the first trial appear very outrageous. He says his substituting
the court for the jury. But these observations won't apply in
case of verdict contrary to evidence. But all allow that in such
case new trials may be granted. Camden has frequently been that
to be rather a spectator than a Judge in his observations - He

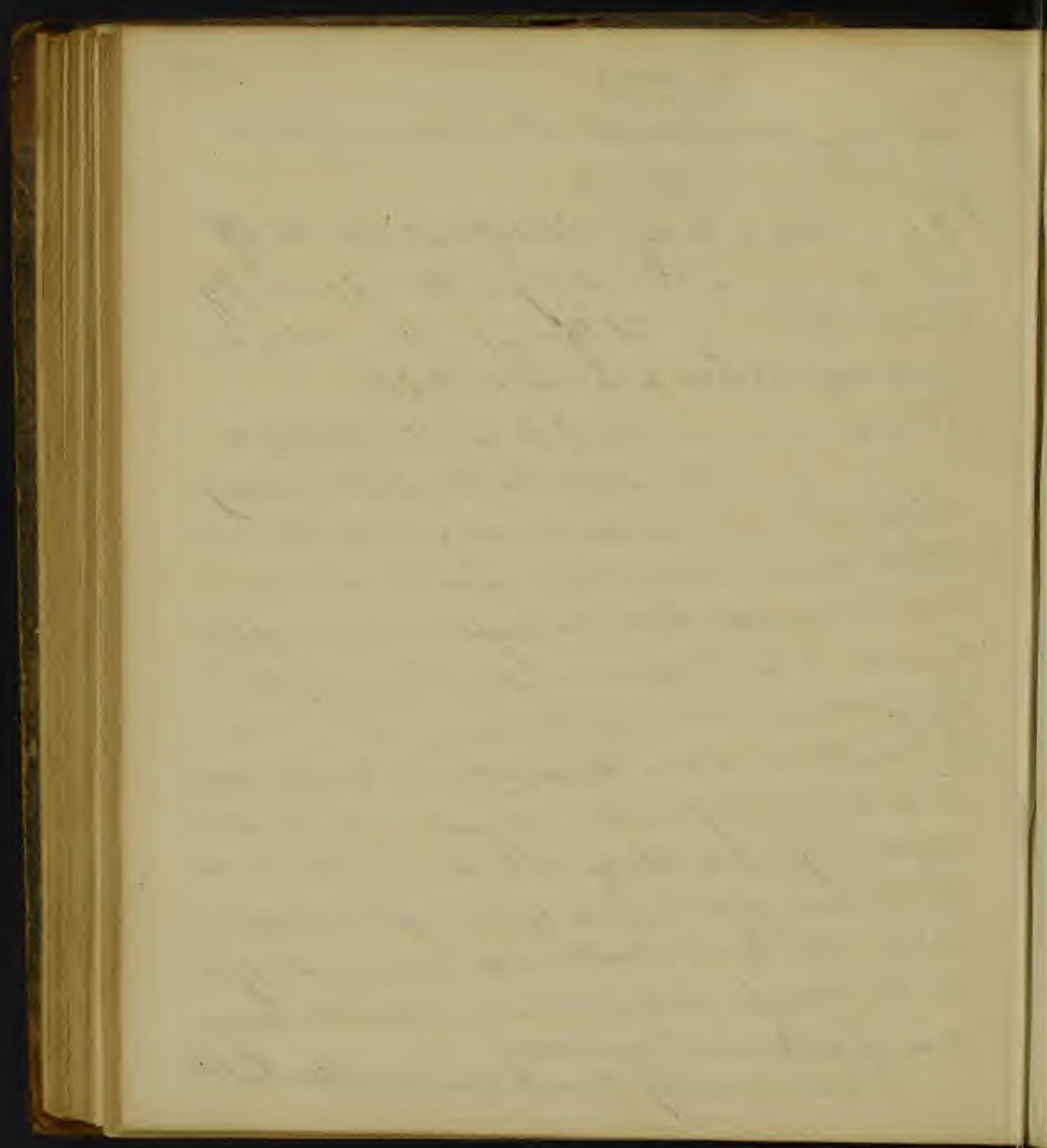


write always of px to Mansfield - He will be well settled against his opinion. 2 Wils 205. 244.

If by a mistake in the jury in point of computation the Plff recovers too much - new trial will be granted - so if on bond they calculate interest wrong - but Plff may prevent new trial by raising the excep. 29 R 113. 123. Cow 57. 2 Wils 262. 1 East 367.

11th. Under our law a mistake of the council in pleading a wrong plea, is ground for new trial. The Stat. calls it mispleading. In Eng^d I find no case where new trial was granted for this reason. The Justice observed in one case that as council on both sides, and the court had mistaken the law, he thought a new trial ought to be granted - In Council 'tis more necessary, than in Eng^d, for in Eng^d by that time, council may plead many defences, but in Council - Def^t is tied up to one defence. Stat. Cow 25. 29 R 131. 11 Mod 202. It is clear that neglect of council is not good cause for new trial, unless there is against the attorney - 'tis the same as if the parties themselves were negligent mixed up by their agent. 6 Mod 202. 22. talk 645. But in Council I doubt whether new trial would be granted where the defence to be pleaded is unconscientious, as wrong. No case of this kind but 'tis discretionary.

In one case in Eng^d the court refused to postpone the trial



when the defence was unconscious. 1 Bos & P 52.

When application is made on this ground in law, the petition must state his defence, so that the court may see whether his sufficient in law, for if not sufficient then no new trial ought to be granted. He must state too whether he can prove it. 1 Root 578. 2 Will 271.

11th That a material witness was absent at the first trial thro misfortune or some inevitable accident as if prevented by age, sudden sickness, or the like is reason why new trial may be had - occurs if he absent himself to attend to pressing business. 5 Bac 252. 11 Mod 163 22.

But a new trial will not be granted for this cause unless the witness make affidavit of what he knows, that the court may see whether his material or not, and whether his applicable to the issue. 12 H 645.

In law, the Petitioner in his petition must state the evidence and then the witness is to testify in a voce or by deposition what he knows. In Eng the motion states it, so it must appear in Decr. The absence of a material witness when occasioned by error or fraud or unfair practices of the opposite party is ground for new trial. No man is to take advantage of his own wrong. 5 Bac 252. 11 Mod 141.

But the wilful absence of a witness or absence thro neglect

is not ground for new trial. He is punishable, the remedy is against the witness for all damages sustained in consequence of his absence. Indeed that is sometimes a ground for postponement. 5 Bac 261. 2alk 651

And a new trial is never granted for the absence of a witness whose testimony the party might have had by using due diligence, he is here guilty of laches. 2alk 647. 2 Chapp. 1 wils 98. 5 Bac 252.

Surprise occasioned by the introduction of unexpected evidence is no ground for a new trial in Eng^d, nor is a mistake made by a material witness cause, for new trial reason in Eng^d is that if a N. trial was granted, the opposite party might controvert the evidence as he pleases, and to the exigency of the case after learning what the evidence was on the other side. 2 alk 314. 2 Ch 691.

Our courts in Connecticut however have in repeated instances granted new trials for a mistake in a material witness. & in statute of 1790.

12th. Another ground for granting new trial in Connecticut is the discovery of new and material evidence after the trial, 12th Stat. 29. Said in one case that this is ground for new trial in Eng^d, but the prevailing opinion is otherwise. 12 Mod 584. So in one case a receipt was lost and in consequence of the loss a recovery was had, yet it being afterwards found was not cause for new trial. I believe the reason for this rule is that the party might thus subvert

1871

Jan 1st

Received of Mr. J. H. [illegible] the sum of \$100.00

for [illegible]

Jan 15th

Received of Mr. J. H. [illegible] the sum of \$50.00

for [illegible]

Feb 1st

Received of Mr. J. H. [illegible] the sum of \$25.00

for [illegible]

Feb 15th

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

Mar 1st

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

Mar 15th

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

Apr 1st

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

Apr 15th

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

May 1st

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

May 15th

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for [illegible]

Jun 1st

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for [illegible]

Jun 15th

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for [illegible]

Jul 1st

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for [illegible]

Jul 15th

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for [illegible]

Aug 1st

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for [illegible]

Aug 15th

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for [illegible]

Sep 1st

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for [illegible]

Sep 15th

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for [illegible]

Oct 1st

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for [illegible]

Oct 15th

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

Nov 1st

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

Nov 15th

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

Dec 1st

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

Dec 15th

Received of Mr. J. H. [illegible] the sum of \$10.00

for [illegible]

the evidence as he pleased. 12 mod 584. 5 Bro 252. 1 V R 269.

But new trial will not be granted in such cases in Convent unless the party asking for it do two things, - 1st convince the court that his material & 2^d that his newly discovered and is such as the party could not by common diligence have before obtained.

A petition for new trial on this ground must state what the evidence is that the court may judge whether it is material, and against what new what that evidence was that was adduced at the former trial, & that it may be seen to be new and different from that before adduced.

It must name the witness, too, to be introduced, tho' after some names thus not named may testify afterwards to the same point. Pridg 223. 1 Best 49. 2 Swift 290.

13th. If the cause is lost by the testimony of a person legally infamous, that fact not being known at the time of trial by the party against whom the verdict was given, a new trial may be obtained in Eng and in Convent.

very little in the books on this subject. In a case in Salk a trial was refused on application on this ground, but there the party knew it to be perjured.

A court of Equity will in some cases grant new trials on this ground. & anciently it was common to resort to Equity for new trials. As Equity used to direct the issue to be tried in a court of law; this

My dear friend,
I have just received your letter of the 10th inst.
and am glad to hear from you. I am well and hope
these few lines will find you the same.

I have been thinking much of late about the future
of our country and the state of the world. It seems to me
that we are passing through a great crisis and that the
outcome will determine the fate of all nations.
I am sure that the people of this country are
wondering what they can do to help in this great
struggle.

I believe that the only way to save our country
and the world is by uniting all the good people
of all nations. We must stand together and
fight for the principles of liberty and justice
for all.

I am, my friend, very truly,
Your devoted friend,
Wm. Lloyd Garrison

is now out of use. In one case the Chancellor says, this is one cause for which he would grant a new trial. I make these observations that you need not be surprised to find this observation of the Chancellor.

1 June 1794. Re Chan^y 1794. A Chan^y would do it. I suppose a court of law would do it too - indeed too reasonable. Talk 653. 12 mod 584.

14th The misconduct of the parties is in most cases a ground of new trial - as if one beats the jury - so if he keeps the evidence out of the way - so if he solicits a juror to find for him - any unfairness & wrong will be ground for new trial. So if the attorney of the plaintiff party uses any unfair means, as if he wrote to the jurors praising the hardships of his clients case - new trial will be granted. Indeed any kind of corbaceery i.e. any thing to influence a jury corruptly to give them a verdict. 11 mod 141. 2 vent 173. 12 mod 125. 5 dec 292. 4 B & 140.

Now far of causes for new trials being granted - now of -
General Rules as to New trials.

Formerly it was holden that new trials were not grantable in actions of Ejectment for judgment was not conclusive - so another action might be brought. So this said the same reason does not apply as in other cases. Nay in Eng^d is not conclusive, for the parties are more by nominal so the real P^{ty} may bring a number of actions for the same thing, by substituting new nominal P^{ty} & Def^s. Talk 643.

Two trials.

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The rule now is that new trials may be granted here as well as in other actions when the verdict is for the Plaintiff, but not when for the Defendant unless for an obvious reason. Reason of this difference is that where the Defendant prevails he remains in possession and Plaintiff in statu quo. So the Plaintiff may as well bring a new action as have a new trial - but where Plaintiff prevails there is a change of possession. Salk 648.50.
1 Inst 2224. Sta 1106. 5 Bac 253.

It was formerly held that after two verdicts in the same cause and both the same way another new trial could not be granted. This is not now true - for the this circumstance makes it more difficult to obtain a new trial, yet it will not absolutely prevent it, nor would three similar verdicts. 6 Wils 22. Salk 646. 11 Mod 131. 3 B. & 387.
4 Burr 2108.

And is a general rule that new trials are not grantable against the Defendant in any criminal case, tho' in many cases it may be granted in favour of Defendant. This is from the benign principles of the law. How 137. 1 Root 36.

But not in all cases is it grantable in his favour. In capital cases, or where the offence is higher than a misdemeanor no new trial is grantable in England on either side. 6 J R 633.

But when the offence is not greater than a misdemeanor a new trial may be granted in his favour as in case of perjury, libel,

Of Costs.

In Eng. when costs are decided to follow the final event of the party who was successful on the first suit; and again, he has costs of both suits. But if the other party succeeds in the second, he shall have costs of the second only. Those of the first are not awarded on either side, yet is discretionary with the court. This is only a general rule.

3 Ind. 619, 3 RR 309, 2 Hen. 4 1639, 641.

In Connect. general rule is that the whole costs abide the final event, yet is subject to the discretion of the court and this rule is not always applied. -

Writs of Error

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In proceeding on this subject, I observe that the principles must be the same in all cases, but the mode of carrying them into execution is different in Eng^d and in different States. But the principles on which these remedies of judgment are founded are the same.

A writ of Error is said to be a commission directed to the judge of a higher court to examine the record of an inferior court and if error is found to reverse the judgment and if not to affirm it.

It is not a writ of error when a writ of error cannot pass as a judgment in a common suit - it cannot pass as a default, for the court have no authority to reverse a judgment till they have themselves examined the record, & then learned whether it is erroneous. If the Defendant fails to appear the court cannot reverse the judgment of course, and issue execution as in case of a default.

There are two kinds of Writs of Error -

1st Error in law - 2^d Error in fact. The former is most frequent and most important. Error in fact means that there is some fact existing before the record in some fact does not appear at the trial, and not any that does appear which makes the record erroneous - for no writ of error lies for a wrong judgment unless it appears on the record.

Writs of Error.

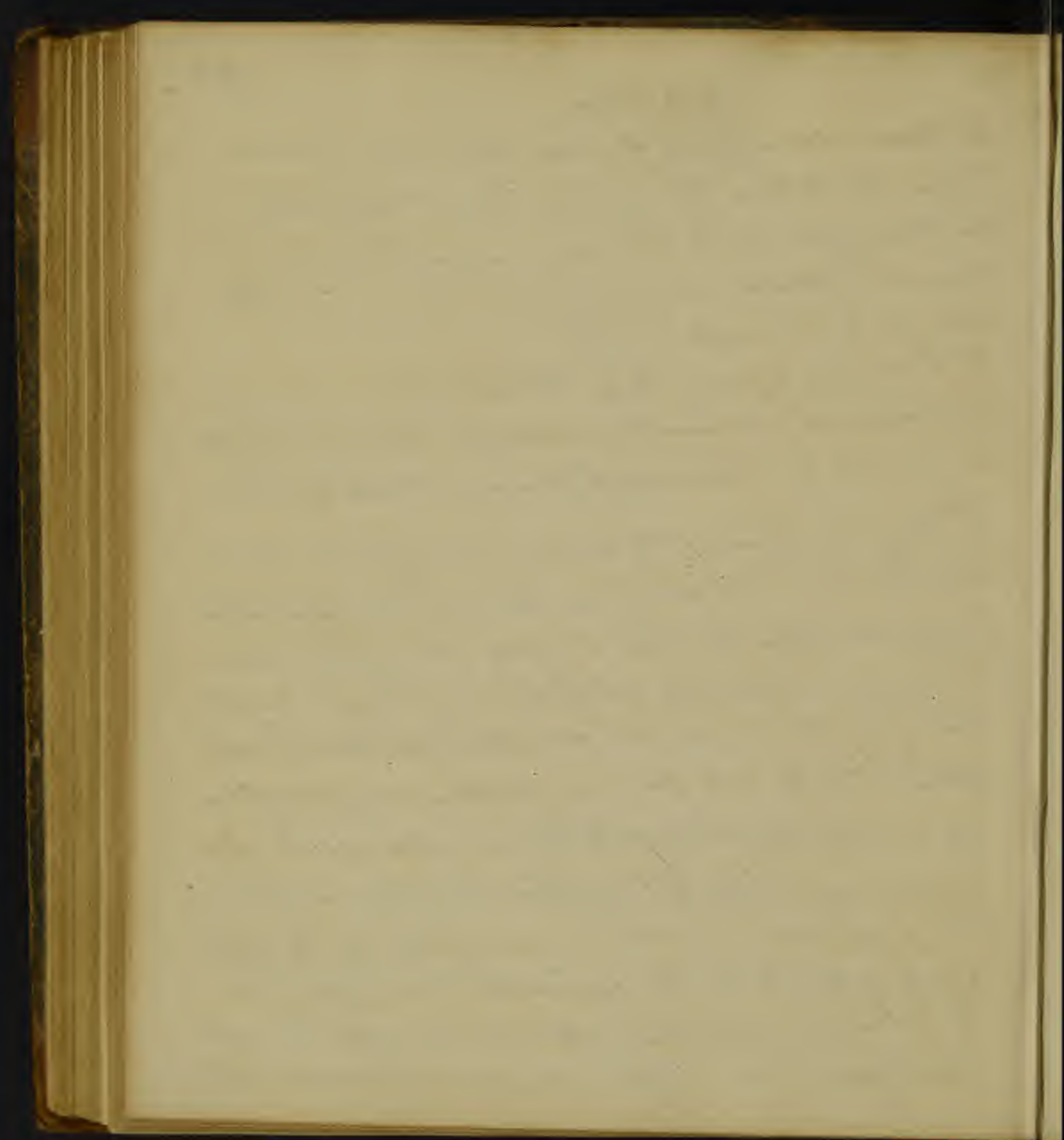
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But the error in law complained of always appears upon the record. The case is then stated on the record, and the point determined must there appear, and the whole case as much as the whole case in a demurrer to a declaration and no enquiry can be made out of the record, you must be confined to this.

By the way there are many things that do not appear on the record in the manner of a demurrer to a declaration which may be brought upon the record by a certain mode of proceeding to be mentioned hereafter.

Every wrong of law of the Court may be brought upon the record in this instance. This writ of error (for error in law) does not lie for any matter dehors the record. No enquiry extrinsic of the record can be made. So you see a writ of error may always be brought upon a judgment on demurrer to a declaration. Where there is an apparent jurisdiction, writs of error are of little use. A question of law may arise upon the proceedings that do not appear upon the record and yet it may be plead that is sufficient, and if tis, a writ of error lies - as where there is a motion in arrest of judgment for the insufficiency of the declaration. This lays foundation for writ of error.

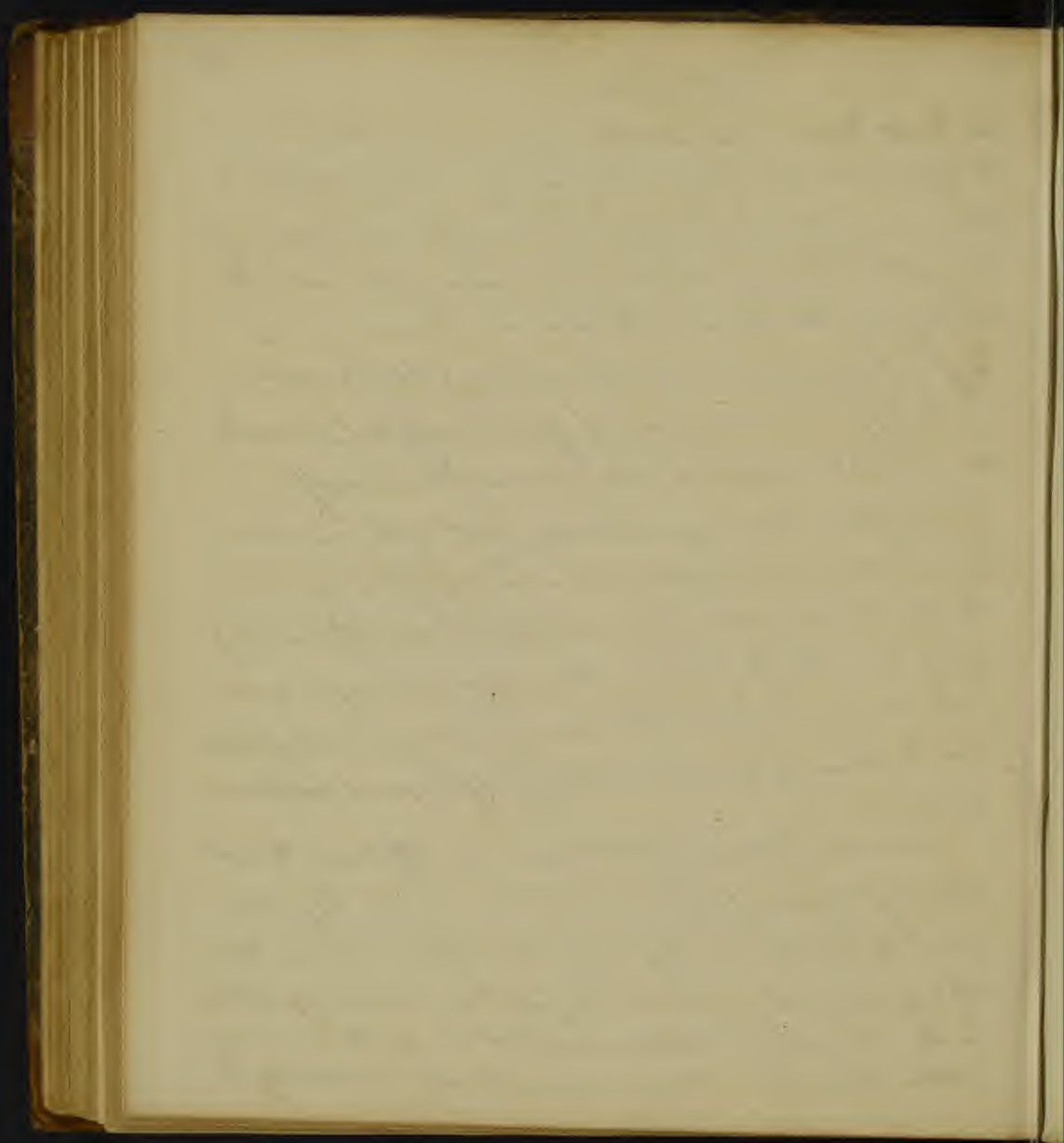
The Court admit or reject testimony often. As thus B and C are witnesses, B objects to him on the ground of interest but the Court admit



him. D. still thinks he is an interested witness, and swears the opinion of the Sup. Court. This is but an objection by writ of error to the opinion of the court, stating that he was sworn and the grounds of his objection to him and the fact of his admission by the court. In this way may any other opinion of the court as an opinion in giving a charge to the jury be pleaded upon the record viz by writ of Error. and the judge is bound by his oath of office to certify that this was the case of his State truly and if he not he must state it himself.

This writ of Error lies for any interlocutory judgment of the court the in general it never can be brought until a final judgment is rendered, as when the court overrule a plea in abatement. Now Doff cannot bring writ of Error till after a trial on the merits, for there may be no use to it but if in this trial he fails he may then bring his writ of Error upon the opinion of the court in rendering judgment against his plea in abatement.

So in action of account, Doff pleads in bar. If demand the court render judgment good computed, no writ of Error now lies. The question goes to the Auditors and they award that Doff is in arrear. Now Doff may bring writ of Error on this judgment of the court against his plea in bar. So in writ of partition, no writ of error lies till a writ of partition issues and a return is made and judgment rendered by the



count upon it, for the partition may be according to his wishes.
1 Roll 750. Co 8635-11639.

Is no objection to the Deft. bringing a writ of error that he made no defence - Suppose there is a default where there is a fault in the declaration - as where an action of Haver is brought for calling the Plff. liar and villain. The Deft. suffers a default, he may bring a writ of Error and reverse the judgment for the declaration is insufficient. So if the case had proceeded to trial and he had made ~~no~~ defence, but had taken no exceptions to the defect in the declaration, still he might bring a writ of error afterwards. But if the defect is such as is cured by verdict no writ of Error lies. I speak now of substantial defects, so that they would go out on general demurrer or on motion in arrest.

This rule applies to other parts of the pleadings as well as to the declaration - as where Deft. pleads assay but don't state any in his plea, he only states a number of things which merely amount to relation. The Plff. instead of demurring, traverses them and they are found in favour of Deft. - now Plff. may reverse that judgment and all this appears on the record.

- There is a rule that whatever is pleadable in statement need not be pleaded is not subject of Error; but if pleaded is a subject of error. There is however this exception to it, that if the writ is absolutely void in itself, so that no judgment can be rendered on it in

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power of the Off. the defect the not taken a surage off by her
in abatement is a subject of error. As if a Duke's court being in re-
tion in her own name and states in her declaration that she is mar-
ried and coupled in abatement is made and judgment is rendered
in her favour, a writ of error will lie. If of the exact had no pa-
rtition of the subject matter - writ of error lies.

Another rule is that no person can bring a writ of error on a judgment
ought a party or bring to the record, and the party must be one who
has been injured by the judgment. As if the controversy is about land and
the owner dies before a writ of error is brought - who shall bring it?
They the person to whom the land goes after the owner's death by the
will if there is no will. It must be brought by the representative of
the demand who is injured by it.

If the controversy is about personal goods it must be brought by the
ex. or admr. If there is a devisee of the land he must bring it.

10th 747. Indeed the principle extends further than to mere representa-
tives. A sells a farm of land and warrants to the title. C, one of his
partments to recover it - they go to trial and Court renders judgment in
favour of C. B is injured by the judgment and he vouched in A to defend,
how it is such a finding that he may bring a writ of error to reverse
his judgment 10th 748. This principle may be further exemplified -

Suits of Error.

Suppose A. sues B. to recover 40 acres of land and £50 damages, and recovers it. A is dissatisfied with the judgment but dies before he gets a writ of Error - who shall now bring it? Clearly A's heir - but he will not then & his executor may bring it for he is injured for the suit is as well for personal as real property. And if B the heir should settle with B. and release all errors in that judgment still B may bring a writ of Error, for the damages are not released. Co L 558.

This principle goes still further, is a general rule that if there are more Defts than one all must join in the writ of error, but suppose one is acquitted shall the other Deft recover it? There arises a difficulty. A sues B, C, D. D is acquitted. B and C wish to reverse the judgment. Do they? because if reversed, he is brought in again. The rule seems to be established that they have a right to reverse the judgment. I find no case in the books but our courts have permitted it. - See 216.

A question of this kind much agitated in the books their country, remains doubtful viz whether a bail can bring a writ of Error to reverse a judgment rendered ag. his principal. If there had been no case I should suppose he could for he is injured by the judgment if it was erroneous, for then there would have been no judgment ag him as bail. There are however a variety of authorities against this which

say he cannot recover it. But he is as much a party to the record as the parties before mentioned. I know of no one case that settles the point. The principle always is that he is damaged, not that he is actually a party by name. See C. 481. on one side. C. 447. other way.

In proceedings in a reversal or different in different courts, I will point out the English mode. In common cases where error is brought from an inferior court to a superior the record itself is carried up and not a transcript of it. As in case - carried from C.B. to B.R. and from this it follows that judgment is rendered in B.R. in the record as it ought to have been in C.B. and they issue execution on it.

In the latter it is not so. The record is not carried up except as a formality, only a transcript and if judgment is affirmed then the court below grant execution on the judgment which they rendered. If reversed the court below issue no execution but render judgment the other way, for Parliament never renders judgment too. See C. 441.

When the record is carried up a *scire facias* (as they call it) issues and *audendum* comes C. 441. This is not used usual, for the writ in most generally appears without notice.

In this country nothing is done only take out a writ 12 days before hand stating all the errors and it proceeds as any other case. This mode is pretty extensive - viz that of the National court.

The court of Exchequer in Eng^d is a court instituted only to try

Writ of Error

Writ of Error in writs originally commenced in B.R. are brought to this court by the Barons of the Exchequer and justices of C.B.

284 I will now take some notice of Error in fact. This error in fact is something out of the record, no coverture Infancy, and so in any other case where the court cannot properly render judgment as they do by reason of some fact existing. As when the deft lives out of the State, the court are bound to continue the case one term. Suppose then the Plff should take judgment and execution the first term - Error lies on this judgment, and the same is true if the deft is a citizen of this State but is out of it at the time of moving the writ.

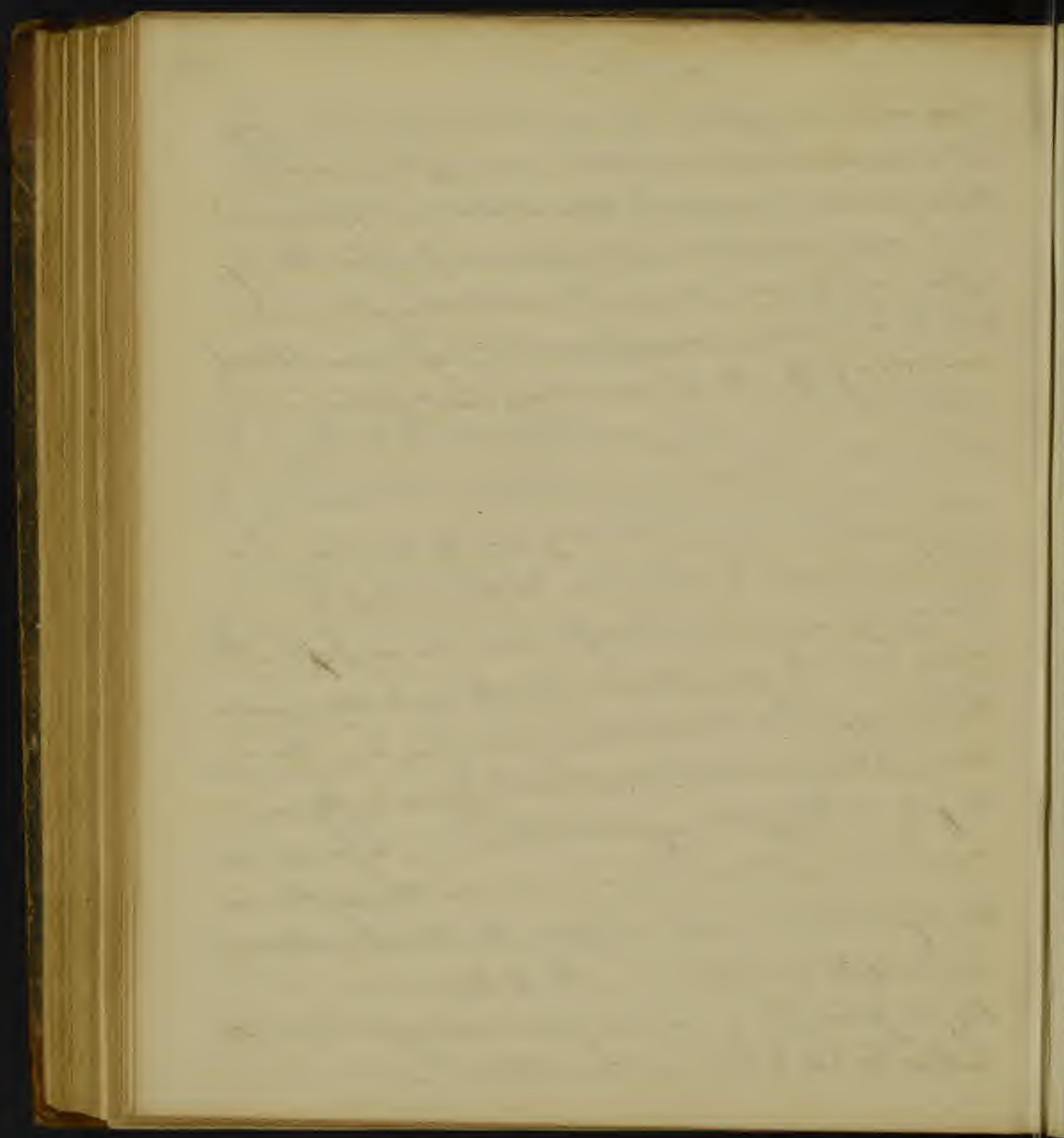
But suppose the fact that he lived in another State denied, and the Plff avers that the deft was at home in Connecticut at the time the writ was brought. This question of fact must be put in issue and tried by a jury like any other fact. The general issue to a writ of error is Nulla in causa. But this you must not plead when you intend to contest the error in fact, you must deny it directly as you do any other fact.

This writ of Error in fact may be brought before the same court that rendered the judgment - the judgment is not impeached by it, for the writ of error is grounded upon an error in fact unknown to the court at that time trial. This is a writ of error coram vobis and the same court may correct the mistake.

It will now mention a general and important principle, viz when a judgment is reversed, the court is to render such a judgment as will restore the party to all he has lost, and this is all that is asked for in a writ of error which in this respect has the appearance of a bill in Chancery. Suppose a writ of error is taken from C.B. to B.R. - it brought an action ag B, the declaration is declared sufficient and judgment rendered that it recover £100 of B with his costs, B brings a writ of error in this case, what must B recover? The principle is all he has lost. But what has B lost? This must be ascertained and he recovers it in the reversal and if he has paid the money upon the execution this must be restored with the interest from the time he paid it.

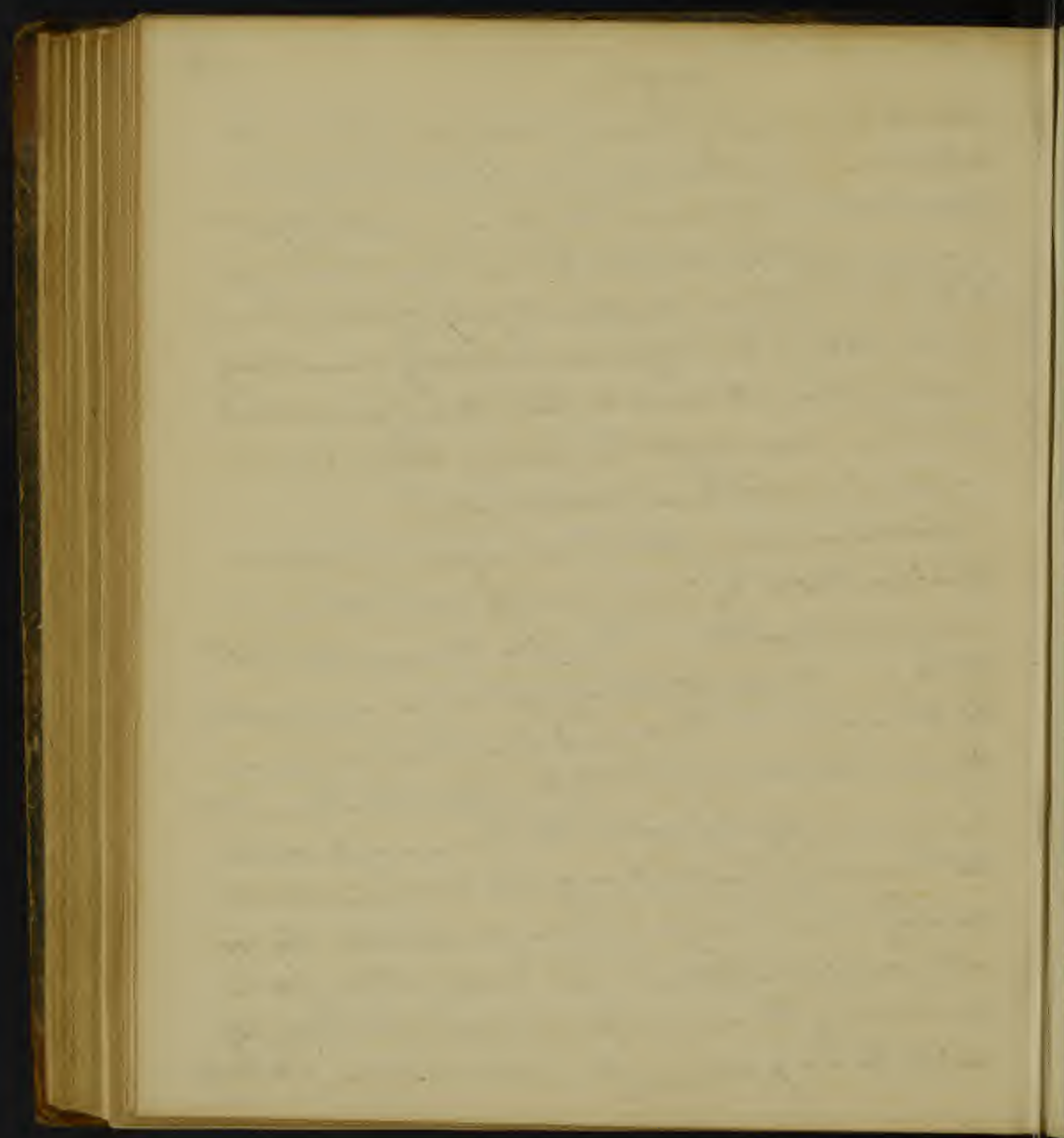
When a judgment is reversed for the ~~off~~ in error who was left in the original action, the general rule is that the court above render the same judgment that the court below ought to have done. This is however to be observed that it will not be possible for the court always to do this, for it may be out of their power to summon a jury, in such case the court below must render the judgment which they ought to have rendered at first - this I believe is the case with all ~~sup~~²⁰ courts of error in the U. States.

They can summon ²⁰ jury, and award no damages. 2. 10 and 206.
10 and 401. 403. 262. 200. 50. 100. 206. 100. 174.



Now is the character also of the writ of Excequer. Suppose writ B. Left place in abatement and the writ is abated, a writ of course is taken to B. L. and they reverse the plea and reverse the judgment by rendering a judgment of restitution which the court below ought to have done, but suppose B. R. affirms the judgment of C. B. and a writ of error is taken to the exchequer chamber and they reverse the judgment - now how is the case to be tried? It must go back to the court whence it was brought. This court of Excequer chamber resembles our court of Errors. 4 mod 125, 1 Hall 403.

I apprehend we have a method which is uniform in the 2 Halls. Different from that of Eng^d not in principle but in the mode of carrying it into execution. - Now suppose the reversal is, he Left they tell you in the books that the only judgment rendered is quod restitueret let it be reversed. Now they say is all he wants but yet you see if I had received the money of the Left - he Left would not be in statu quo by a mere judgment of reversal. He to be sure is so far restored that he may bring a claim for money had and received, but this is compelling a man to bring a suit to recover his money. They say further a writ of restitution is to issue directing the party to restore the money. This is an execution in fact yet no part of the judgment, for this is only quod restitueret what is to be done if the party

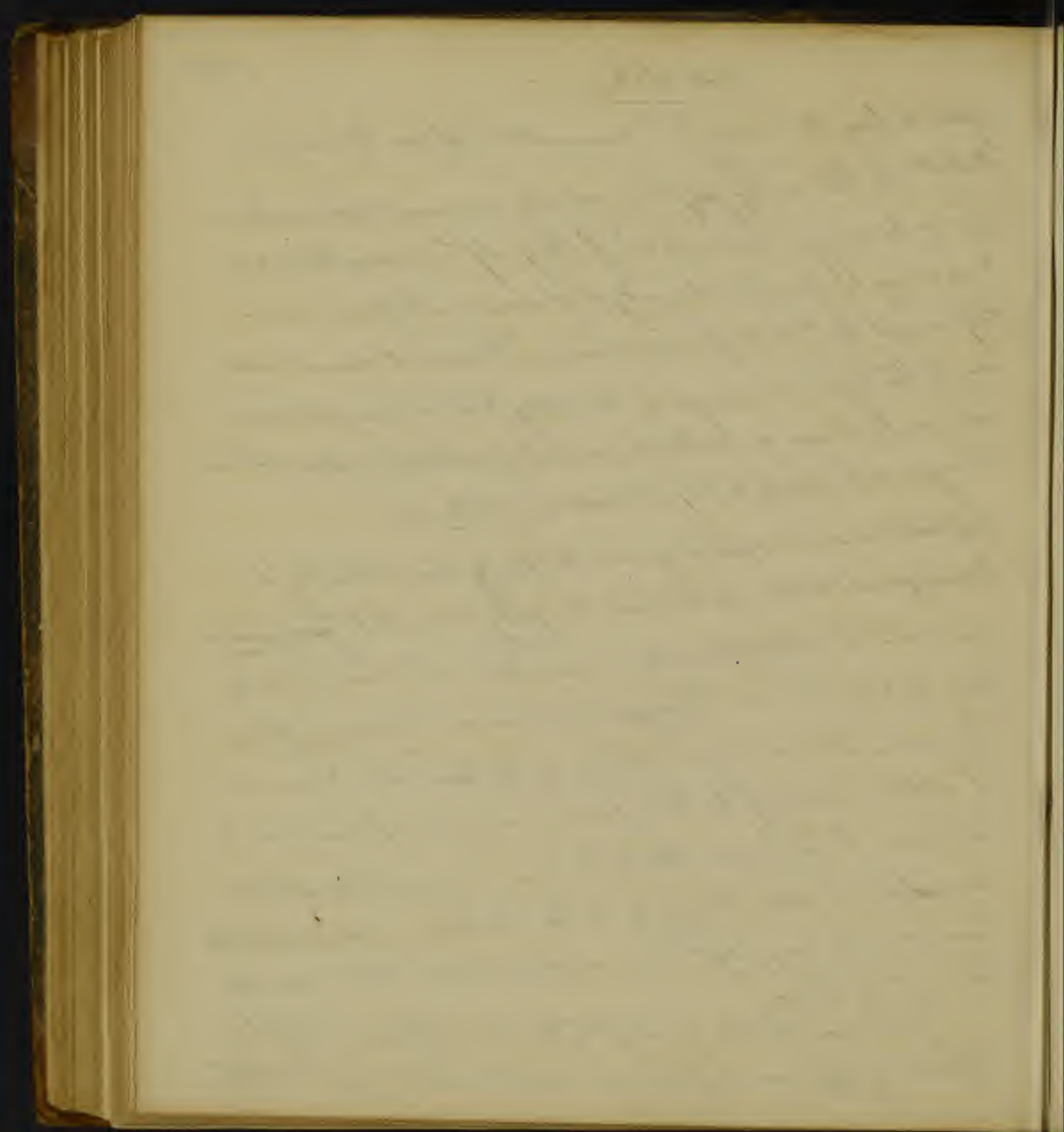


of one to pay the money? I know not, I suppose the process is
 absolute. In this country judgment is not only a reversal but a restora-
 tion of the money which is part of the judgment and execution issues.
 If no money has been paid the judgment of reversal is the same as in
 England except that the Plaintiff has his costs. However it seems, accord-
 ing to the English proceedings if the money has not been paid over
 but is in the hands of the Sheriff no writ of restitution issues but an
 order goes to the Sheriff to pay it back. 1005 Salk 588.

If land was in controversy and the party had entered by force
 of a judgment which was rendered, the judgment would be quod &c
 and a writ of restitution with an execution would immediately
 issue. 1009 How 261. On the subject of reversal see Co. L. 442. Cart 258.

If a man who has thus got possession of the land sells it no writ
 of restitution issues against the third person, but a scire facias issues to
 call him in for he has no title to the land. The great principle of
 reversal is to restore the party to the situation in which he would
 have been had no judgment been rendered, which is to be done by
 Sup. Court of Errors.

I shall now speak of judgment affirmed. Suppose a judgment is
 affirmed by Sup. Court of Errors - what is to be done? Do they



you an execution? No. The jury ^{has} before is now declared to be good and to that court you must go for your execution. But here the Left in Error says, I am injured I have lost the interest of my money for one year. Now the court of errors will issue execution for it. But there is another way, they may render judgment for damages, and costs and issue execution for them. 2 Lamd 225. 4 mod 125.

Now as to the question whether a writ of error is a superseas to an execution. A writ of error at common law is a superseas to an execution after a writ of error has been allowed and delivered to the Clerk of errors. This is given to him that opportunity may be given to every one to find out whether an execution can be issued on the judgment - 28 days are allowed.

We do the same thing here in another way for when the writ of error is signed by the judges it is a superseas to the execution. Cum 205. 209. 376.

If the execution is in the hands of the officer and he has no notice of the writ of error, he may levy it without being guilty of contempt of court. But if he knows, he would be guilty of contempt. Thus it stood at common law. 3 Lev 32. 10 Alk 321.

They have now insisted a partial remedy, for the writ originating from this principle, that a writ of error is a superseas from

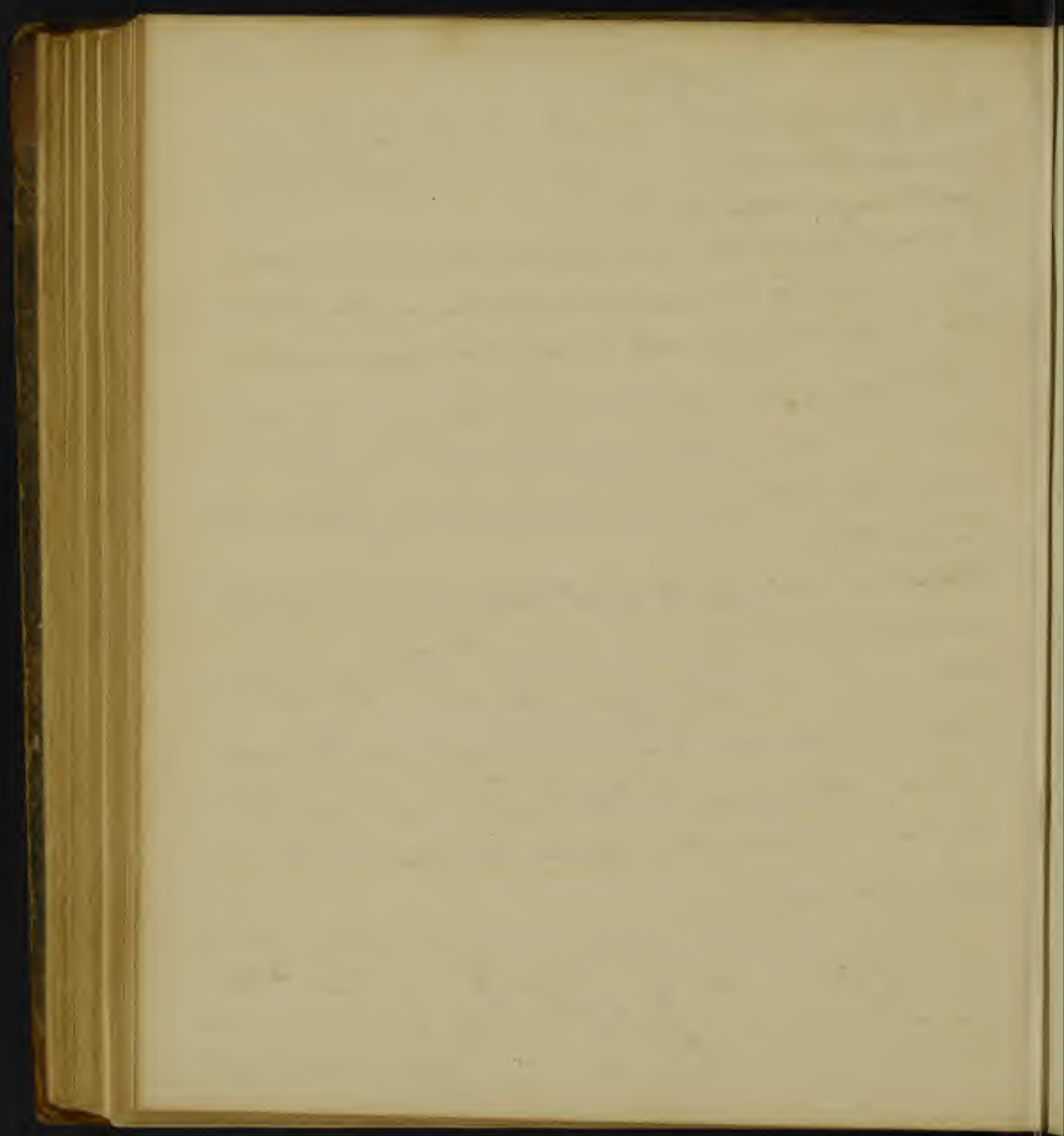
the time, it is found the evils were many. The Property of the Sheriff may all go before the writ of error is returned. And altho the best way would be to get nothing by it.

To prevent this evil they made a Stat declaring that in certain cases a writ of Error shall not be a supersedeas unless a bond is given to uphold the judgment. The Council this bond is extended to all cases.

Now this bond will prevent any damage for the court are bound to take a good bondsman who may be sued and a recovery had of all damages and collected from him if the principal is unable to pay.

There is some uncertainty with respect to what follows. The authorities are contradictory. One thing seems certain if the body of a man is arrested and he is not actually lodged in goal but is on the way to it, if the writ of Error comes, he is to be discharged. This will always be where a bond is given, but I doubt whether it applies in Eng to those cases where bonds are not required for it would be depriving a man of his liberty.

They tell you that which is supported and contradicted by authorities viz. that if goods are taken by a Sheriff or if he has begun to take them what he has done is good. This don't seem to be necessary where a bond is required but where there is none I should think he might



to hold it. James 212. contra 2 Roll 491.

of the course of courts of Error in Eng^d. The Com Pleas is a court of Error to reverse the judg^{ts} of courts below them. I have seen no case where a writ of Error has been taken from this court reversing or affirming a judg^{mt} rendered by an inferior court. I am therefore inclined to think it is final and that a writ of Error may undoubtedly be taken from one of the inferior courts to B.R.

A writ of Error lies from C. Pleas to B.R. and thence it may be carried to Excheq^r chamber and thence to Parliament, the decision of a judg^{mt} in B.R. upon the principles of the common law could always be carried directly to Parliament or to Exchequer chamber and thence to Parliament. But a stat. has given an election to go to either, but a judg^{mt} in one is final and a bar to any other. Harwood 346. East 102. 380.

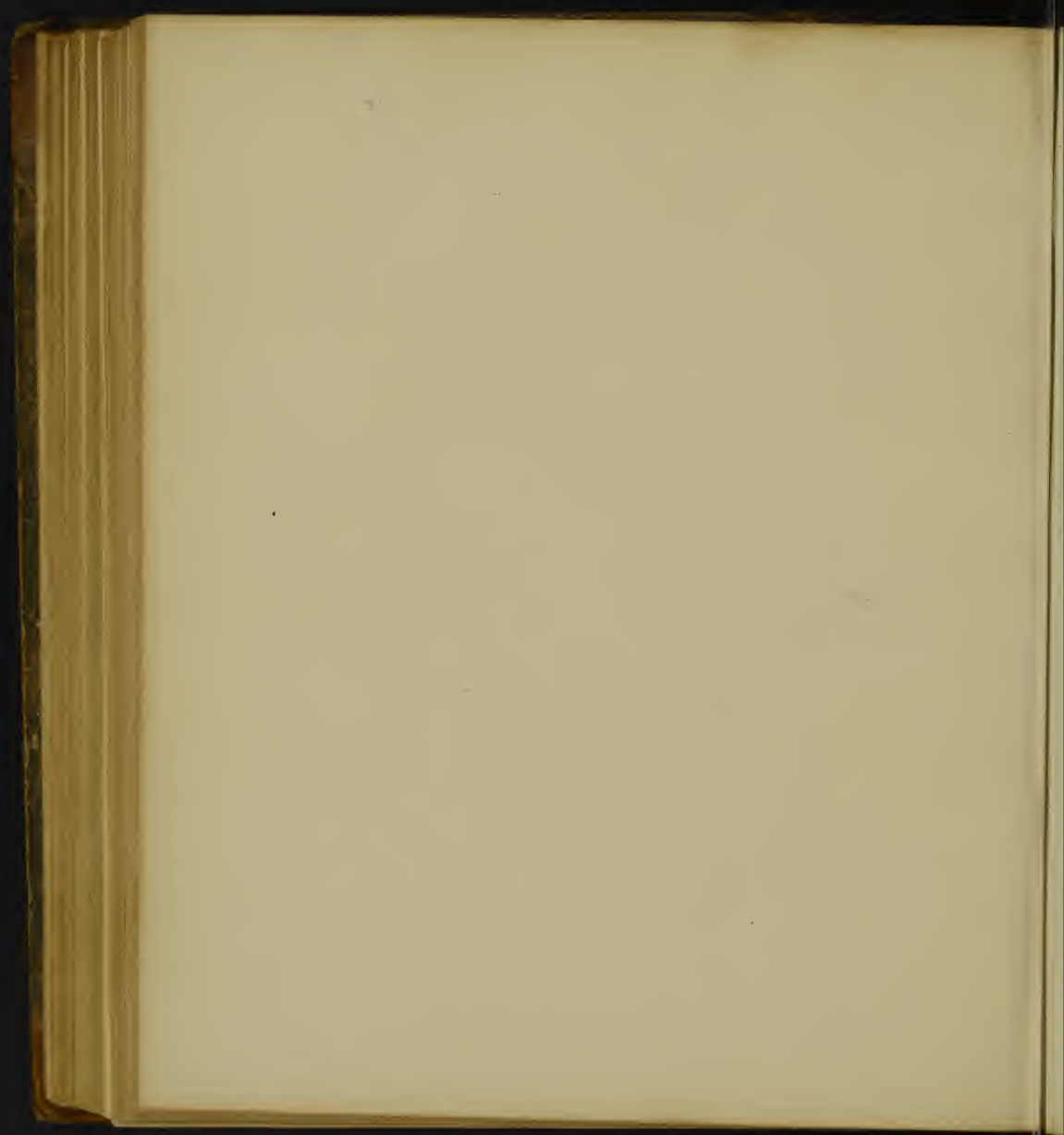
If the Exchequer chamber affirm a ~~decree~~ judg^{mt} the court below must issue execution. If they reverse it for the Exch^r a judg^{mt} in B.R. puts an end to the suit. If reversed for B.R. the case must go back to be tried as respecting a witness, who must now be admitted. If it is on demand or any interlocutory judg^{mt} it must go back. Now for our mode of carrying writs of error into execution. Our sup^r court is a court of Error for all inferior courts; we restore







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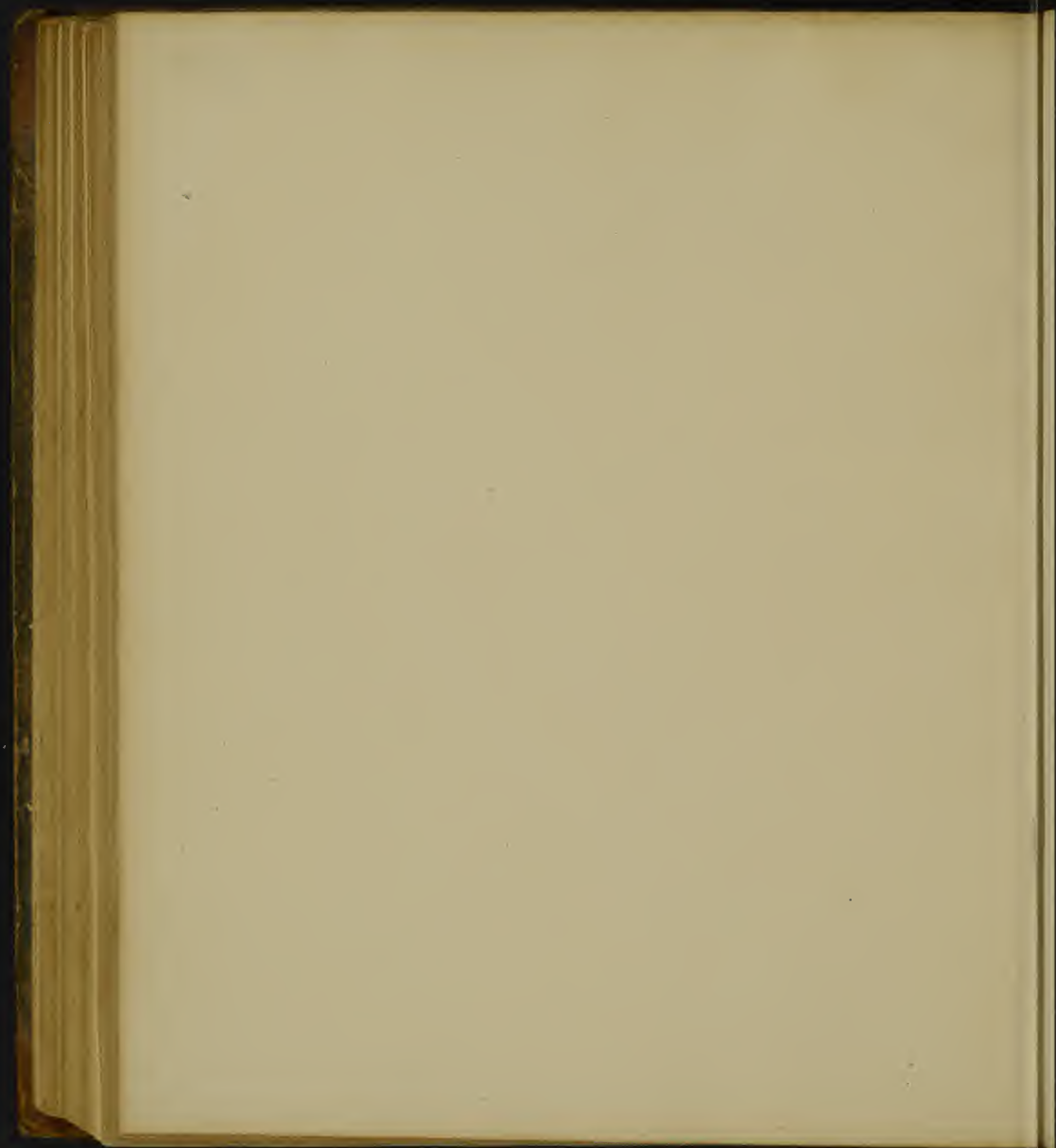
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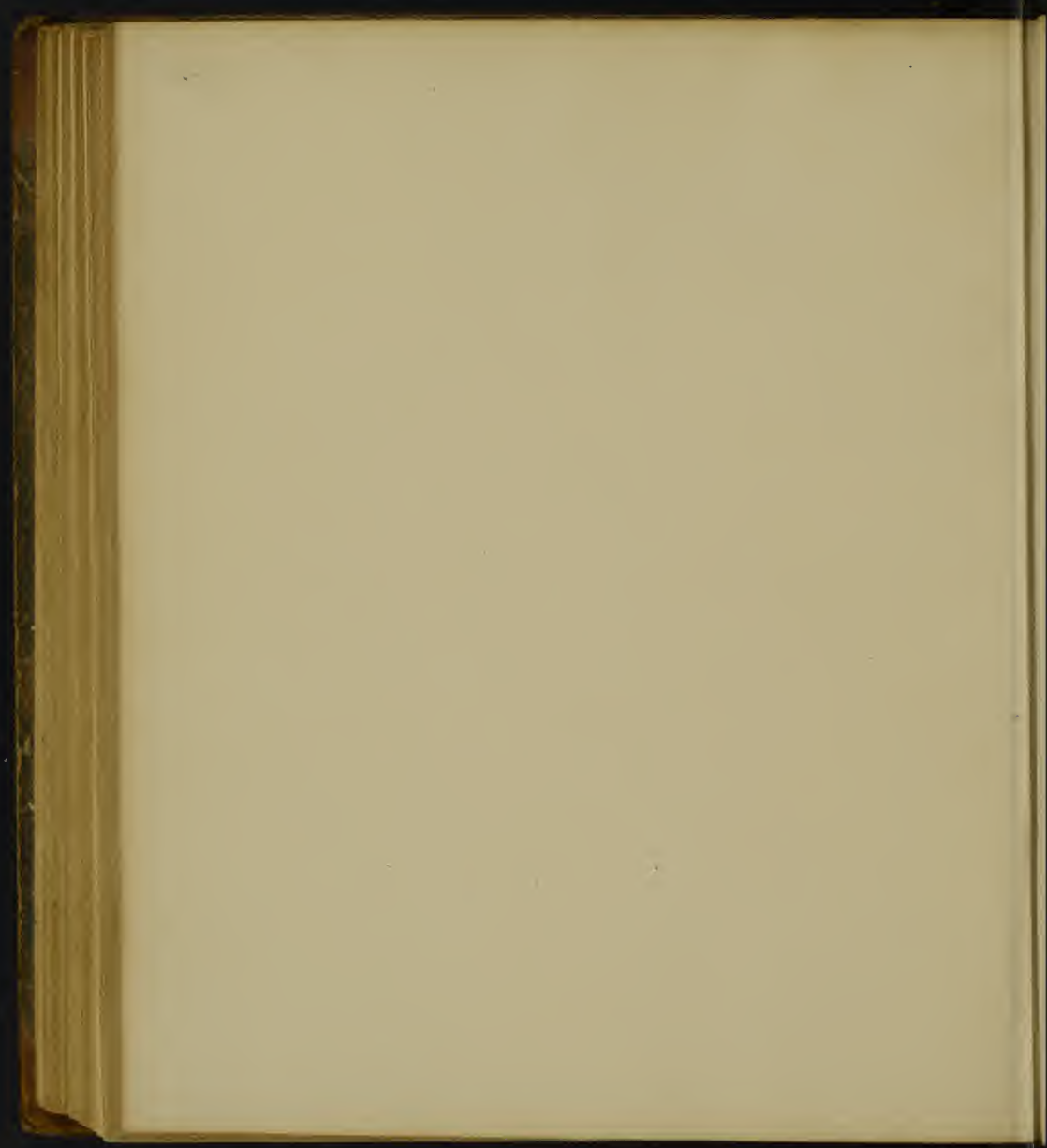


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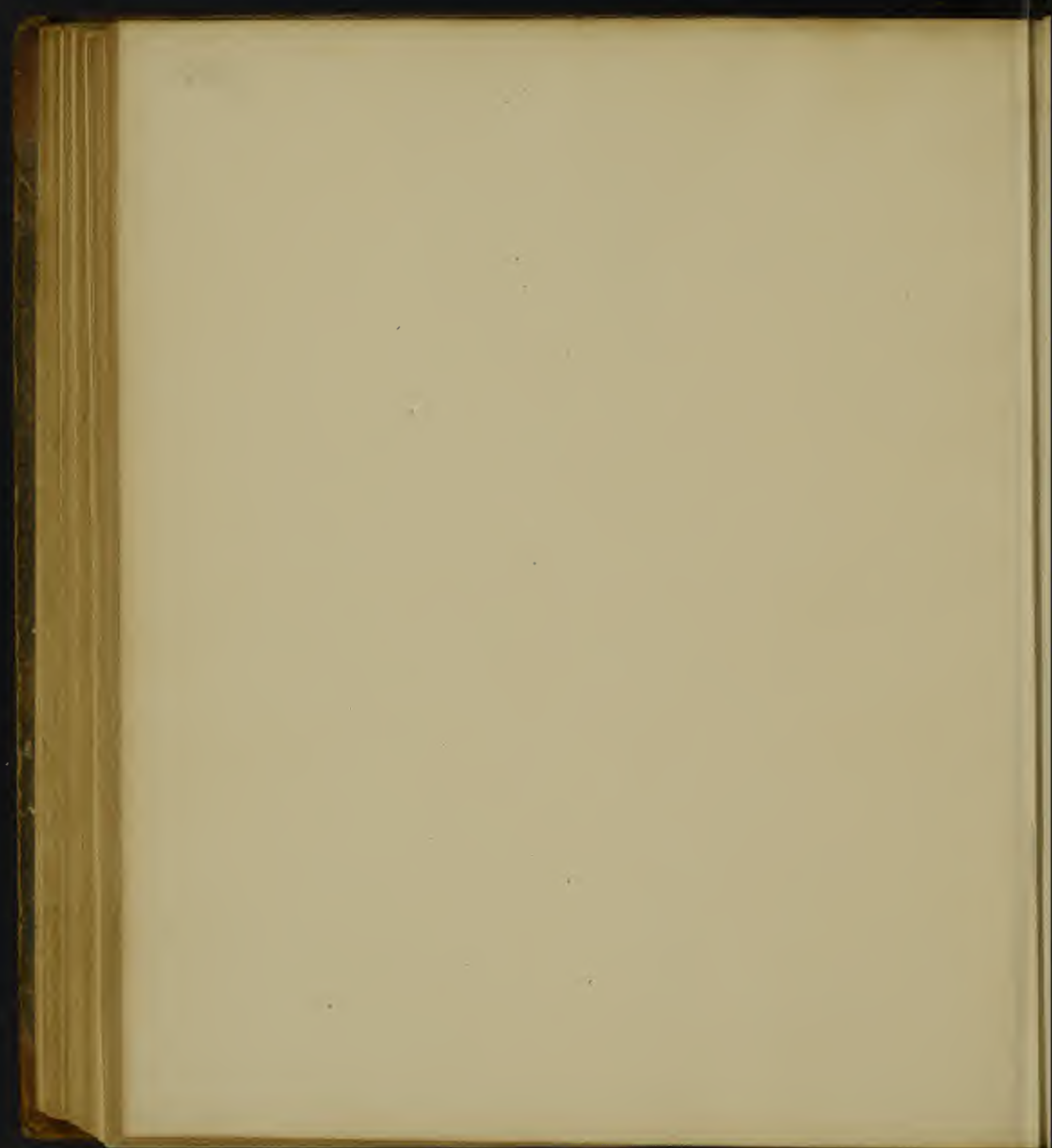


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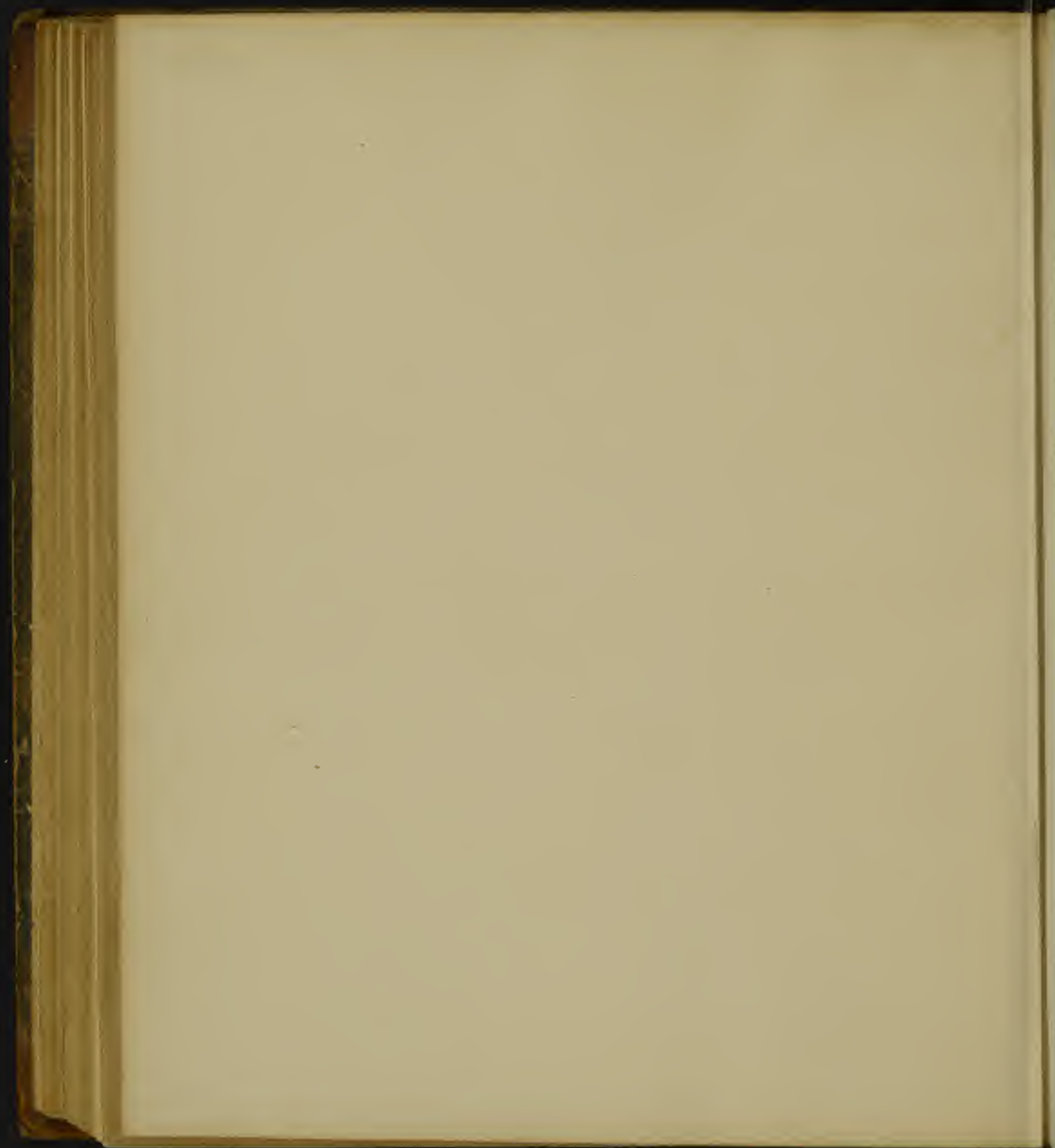




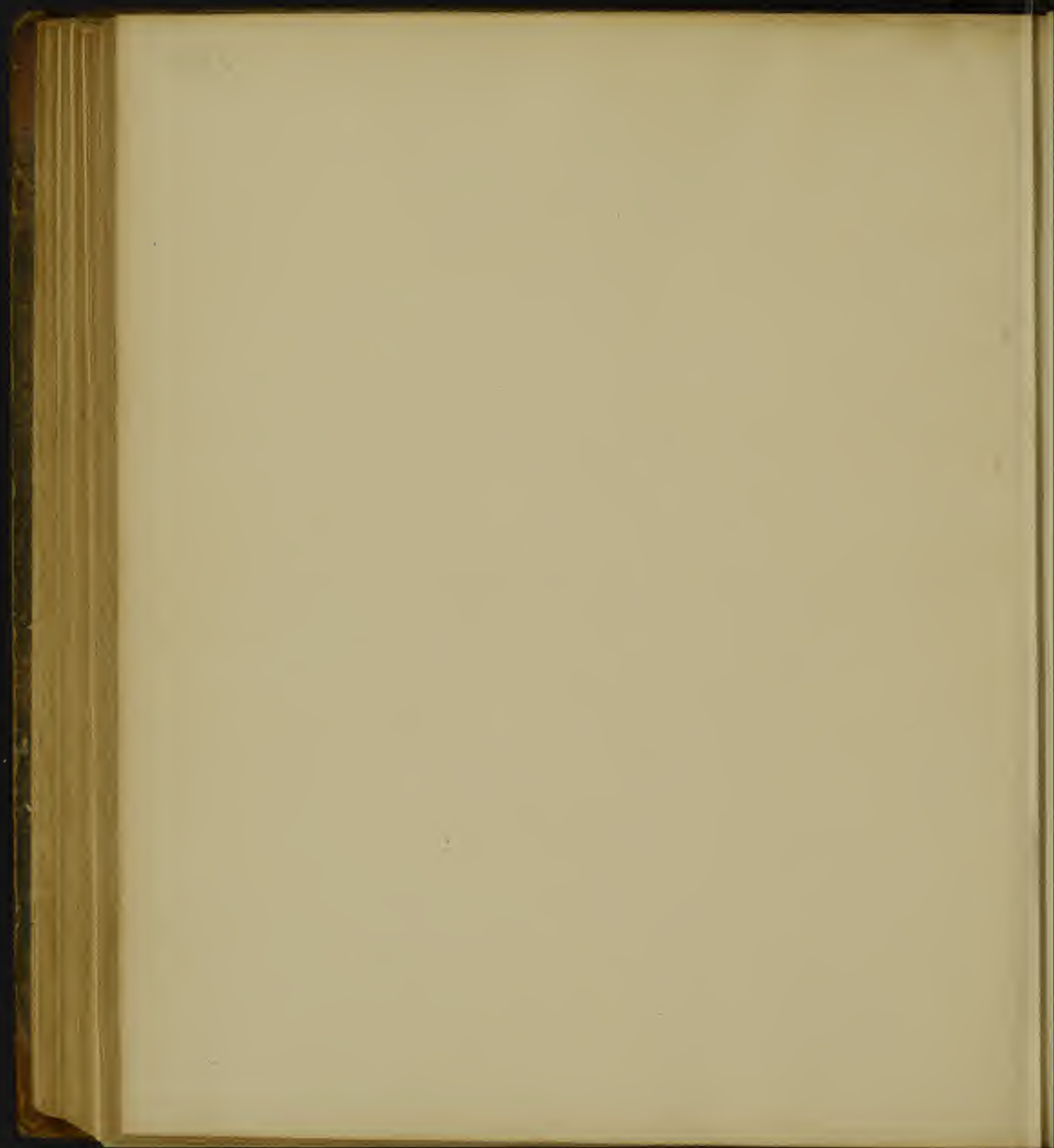
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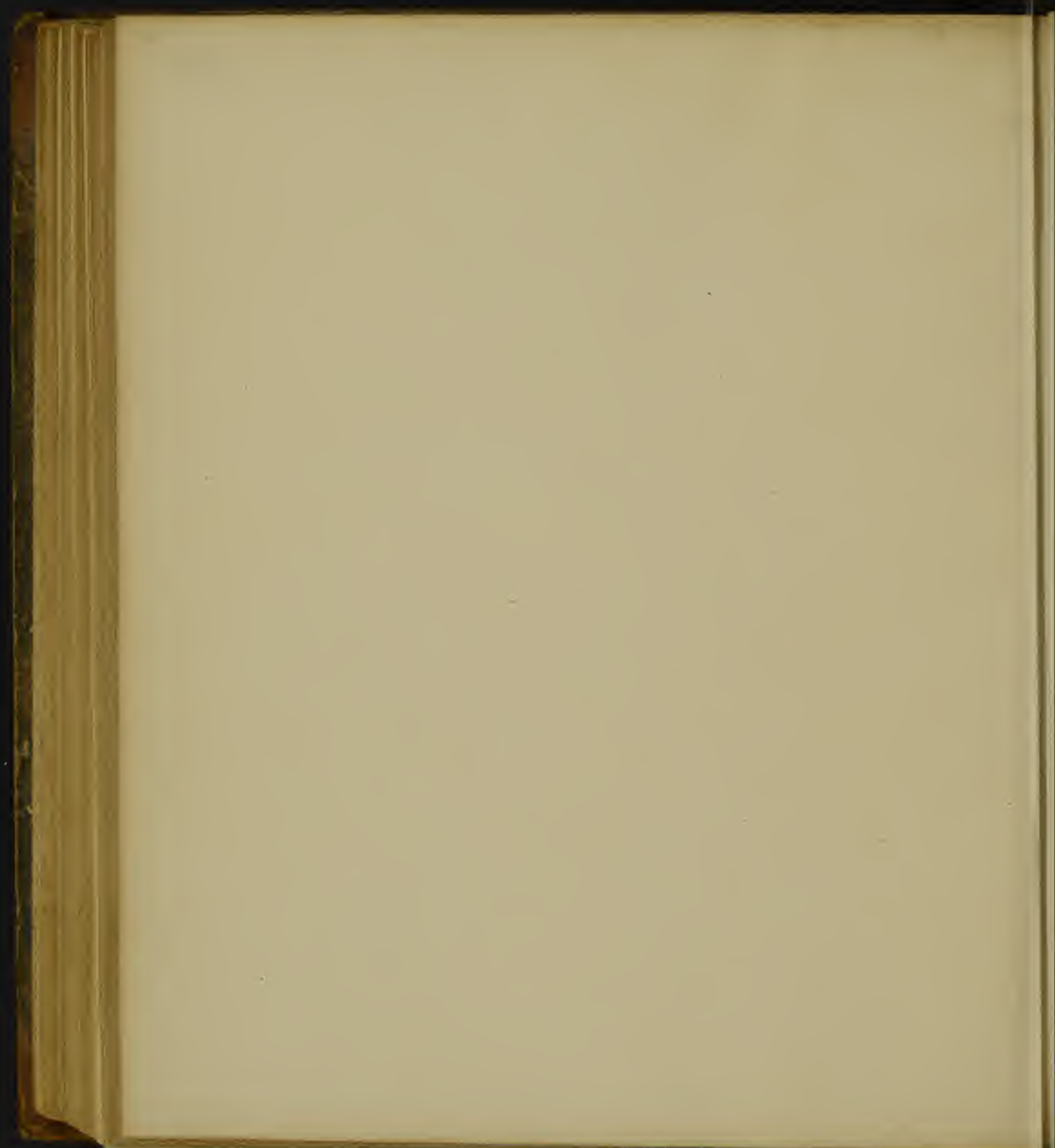
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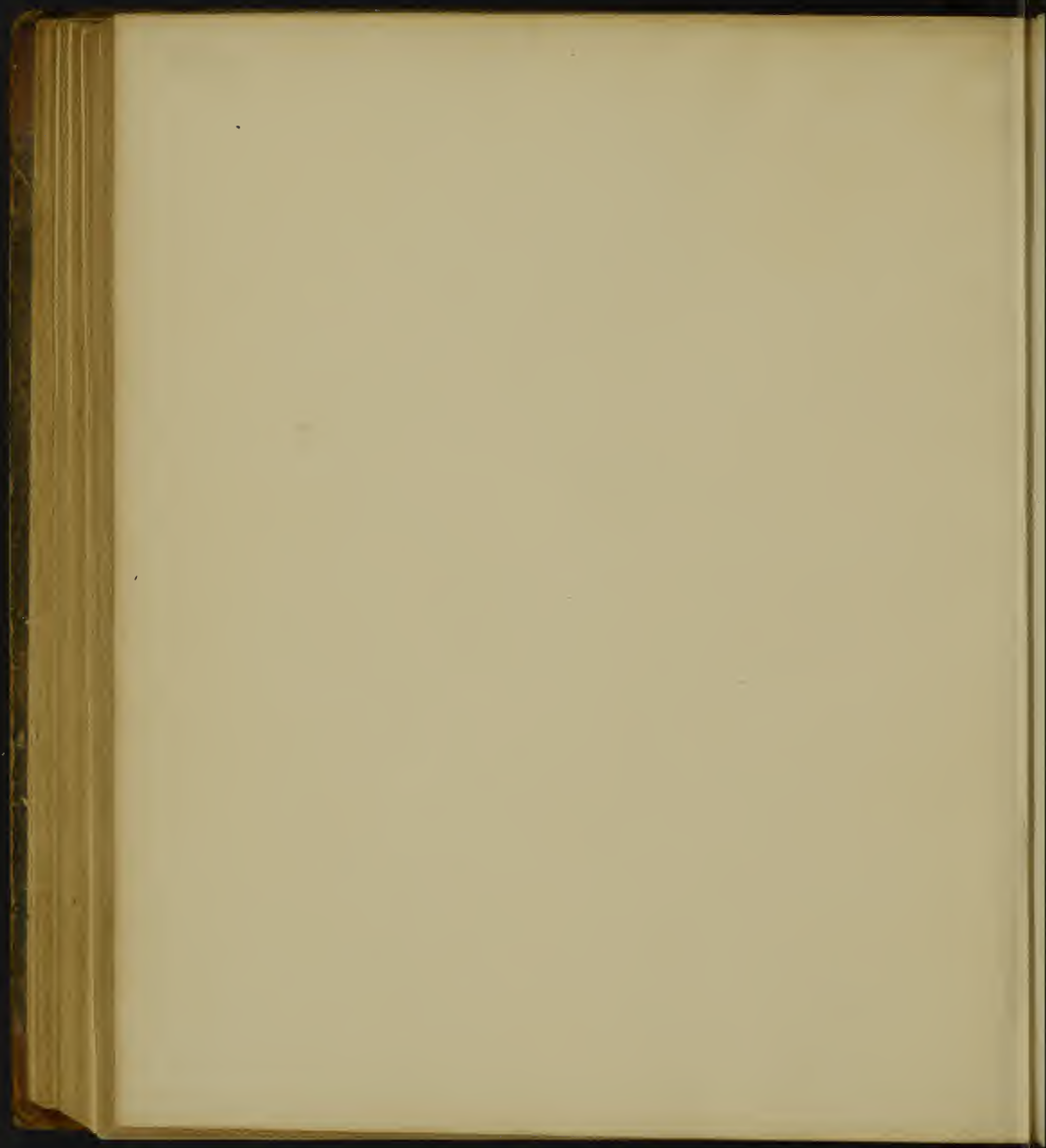
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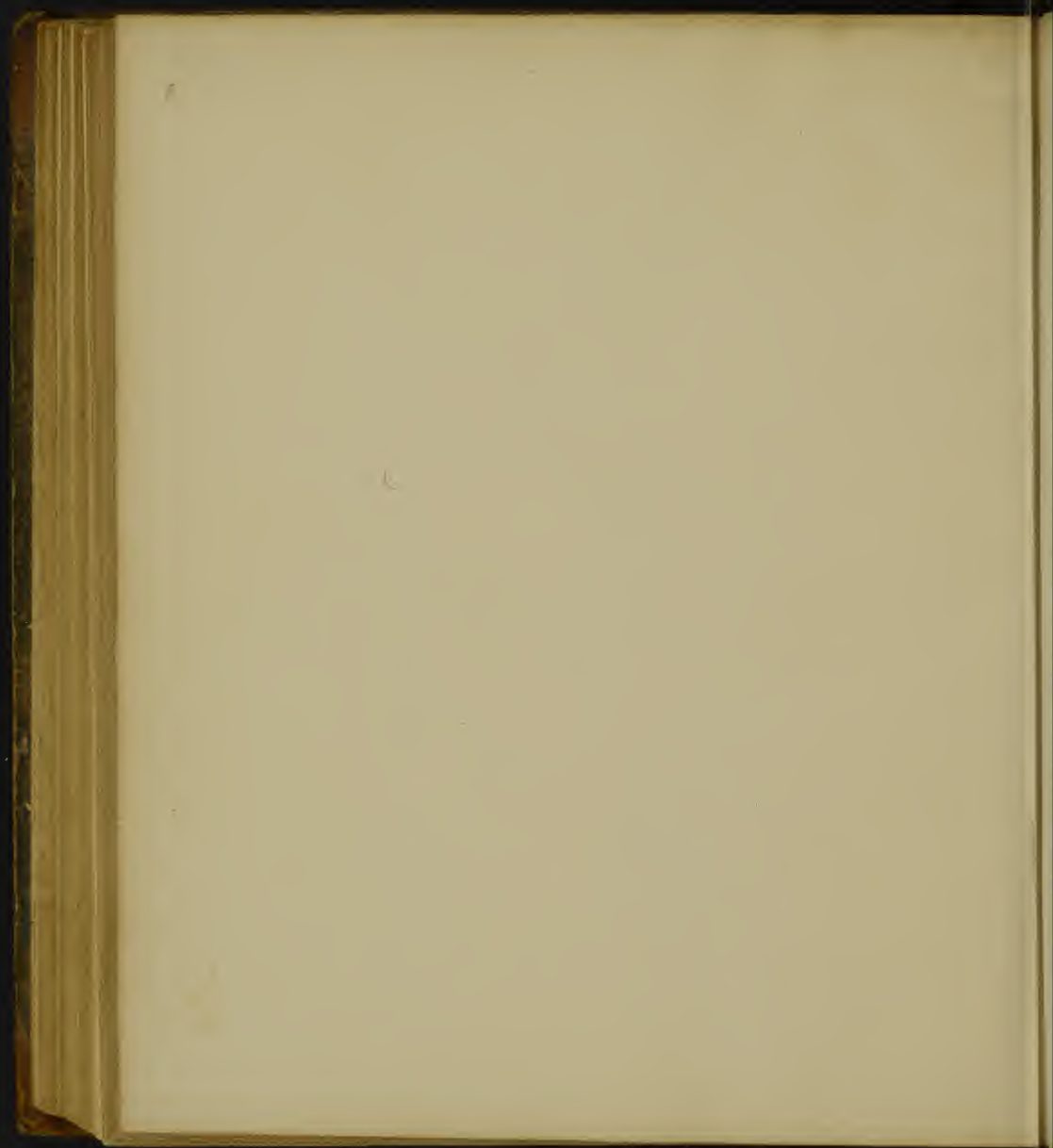
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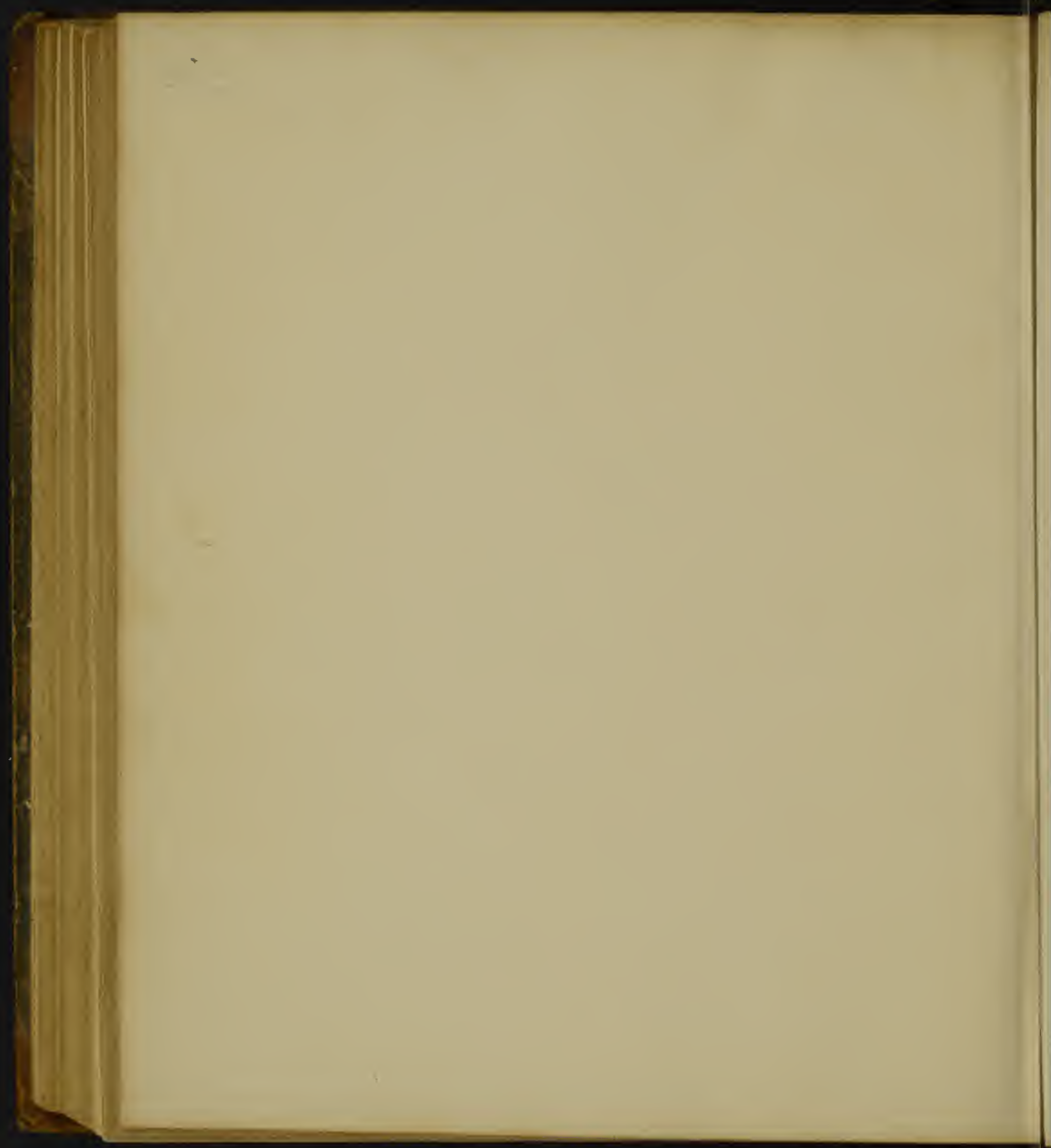
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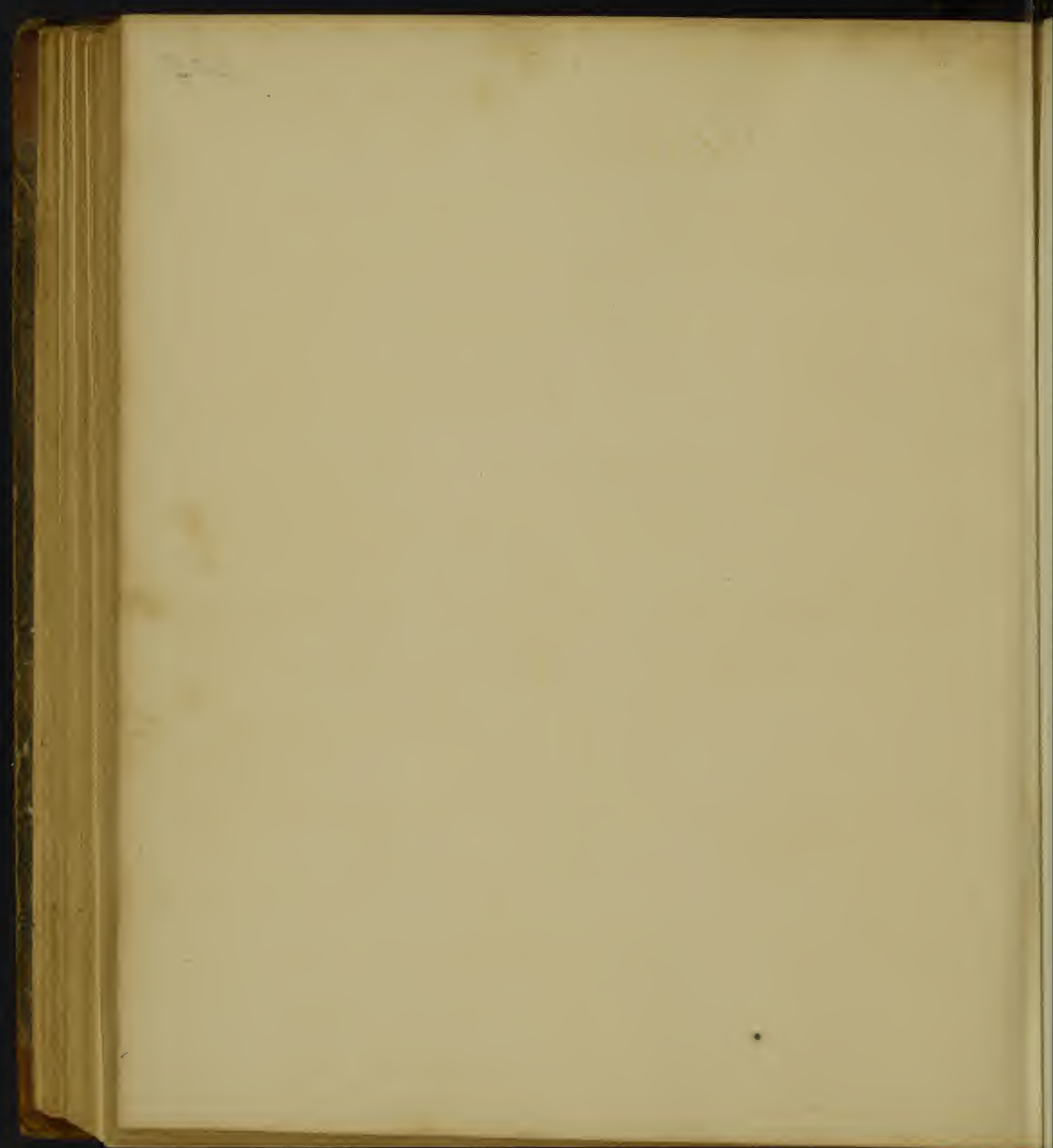


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J. H. Bellamy.

Evidence

Testimony from which a decision is to be made is either written, or oral. All testimony that is written is not called written testimony unless it is in the form of a deposition &c. but written testimony is such as is received from written instruments either introduced by the parties such as books deeds &c. or from the records of courts &c. Written testimony is of a higher value than oral. In oral testimony there can be no dispute as to the truth of the facts of it. Oral testimony must be admitted to oppose written testimony. Some courts may be bound by both kinds of testimony others only by written. And where the law requires written testimony to have a certain effect it can be admitted.

Rules of Evidence. the cardinal rule on this subject is "the best evidence which the nature of the case admits of must be produced, but is always required" if worse evidence of a different nature might always be rejected. Yet it is not meant by this rule to require the best evidence which the nature of the case admits of - for written evidence is always better than oral, yet the latter is

often amply sufficient. The reasoning of the rule is that
 after he knows that there is some evidence capable of
 being obtained, some of an inferior nature should be ad-
 mitted. As if one man saw another in a contract to sell a
 house, and the first knew that if there was a contract, it
 was a written one, the written contract must then be
 produced, & that if there was no written contract, the
 fact testimony would be abundantly. There are two grounds
 for rejecting fact testimony. 1. In those cases and res-
 pecting those contracts where fact testimony is forbid-
 den by Statute - 2.^d Where there is written or high or
 proof. But if the written testimony has been destroyed
 by accident or by some burning or so you may inter-
 duce fact testimony to prove such contract. And here
 be our opinion that the instrument should be sealed,
 and written testimony not be admitted. But also in
 some cases where a man is chosen is found in judgment,
 and he takes perjury under that judgment if he
 should in such case be used in a shop or other
 matter, and he wishes to maintain his claim on the
 ground of the judgment, he must produce the judgment.

In the record of it. A man is not bound by parol contract to pay the debt of another, parol testimony can be introduced to prove that there was a written agreement, for if there was a written agreement it must be shown, for if there was no written agreement it must be shown, for if there was no written agreement it excites suspicion that if introduced it would be against the law withholding it. A witness to a deed is the best evidence of the validity of the deed that can be had, he must therefore be produced, but his being beyond the reach of legal process is good cause for not bringing him. But the best evidence in this must be produced, yet all there is need not, for two men are as good as twenty to prove a fact, but in some cases where the law requires that the fact should be recorded, if it has not been recorded the fact may be proved by parol testimony, as in the case of marriage, and the birth of a child, which law the courts shall be recorded. The infancy or minority of the parties or any other circumstance which depends upon such marriage or birth may be proved by parol testimony. This exception holds where the matter of recording does not in any manner alter the nature of the fact, as it clearly does not in the above cases. But a judgment must be recorded in order to give validity to it, the record must therefore be produced. The rule that no parol

April 22.

And shall be intended to succeed, then either way my attestation written testimony, is true when rightly understood - and proof may be demanded to prove the signing, sealing, and delivery of an instrument, tho' it can't be proved the terms or condition.

And testimony is also introduced to prove the meaning of any ambiguous sentence - but it may be proved a latent ambiguity also when a man gives his name of title to his own paper or test. Testimony which when he had two - hand proof may be admitted to prove which he meant - this proof is always of something extraneous, and the rule in the thing proved must always stand well with the instrument. If a person is not called by his true name, or properly described in a will, circumstances may be brought to show who was one act as in the case of the will with a nick name.

There is a rule that when technical terms are used you must give them their technical meaning. But this is not well applied, but if such meaning will make nonsense of the will or other instrument then you may give them the meaning commonly attached to them, and here no case may be admitted to prove that the man did mean. Eg. A makes a will and gives to B his house called the Yellow Room as terms of inheritance are used. Then terms relating to give to the use estate for life, but B already owns the house

Evidence

in 1811. From this construction makes the will negative - it may be proved therefore that A. want to give the inheritance to B. 1811. 72.

But proof may be admitted to rebut the effect of a claim on a conveyance.

Rule 2. He who holds the affirmative of a proposition must prove it - the other party may however adduce proof if he finds himself so wronged. Rule 15. 278. - yet where the negative charge is made with out doing an act which the law requires him to do, a different rule prevails, for the law always presumes a man has done his duty till he shows or proves. Peak 2.

4th ed. 10. 41. Rule 275.

Rule 3. General rule is that facts are to be tried and not shown - as in the case of a plaintiff and defendant it is not a sufficient to show that defendant is a maliciously guilty fellow. Peak 3.

yet where the character of either party is put in issue by the very pleading, it may be enquired into. Peak 4. Thus if an action of slander is brought and the plaintiff is to mitigate damages that he was of good reputation - the defendant is to mitigate damages may prove that he has always been reputed a thief - Peeler. So in an action for criminal conversation or cohabitation with another's wife enquiry may be made into the

Evidence.

passions increases of the wife, for the grounds of recovery, satisfaction of affection, and in having previously committed acts of adultery shows that there was no affection to which it is. B. & 294.

There is some cases where acts of adultery took place by the consent of the husband no damages have been given. I think some ought however to be given in all cases.

If a man take a mistress, and commits her to any public house, this is not for the public welfare. I once saw a woman & child in a house — where a maid was witness, till the house obliging, removed her. here too a specimen, of a man of a suit is brought in such a house. The Plaintiff character may be in-
-fringed into.

Another rule is the evidence must be such as is applicable to the issue. So if one sue another and the Plaintiff be in payment to not happen under the issue to show that the Defendant agreed to take a horse as satisfaction and that the Plaintiff tendered the horse. This case can be decided to on the ground of irrelevancy.

Another rule is that hearsay evidence is not admissible. The reason is because the law requires the sanction. That this is the reason although from the circumstance that a party may testify

as to what he heard of, from some deceased person, or to what he made him say on his death bed which is equivalent to being under oath. Park. 7. The law also requires the personal attendance of the witness for cross-examination. But there are exceptions to this rule. The cases in which personal evidence is allowed will be found to be those in which the facts in their nature are incapable of hostile or direct proof, and must depend upon reputation. As what a person has been heard to say as to the state of his family is admissible. As what he said as to the name of the person he married, he being now at a distance. 1 Ch. 38. 36. 3. 229.

As the declarations of deceased persons as to pedigree, prescriptions, or customs are admissible. Park. 8.

If a question arises as to the legitimacy of a child—declarations of his father and mother deceased, as to whether they were married or whether the child was born before or after marriage are good evidence. Coop. 89. Park. 7.

But such declarations are not admissible to show that the child born in wedlock is illegitimate for want of a confession. Coop. 90. Park. 7. B. 1. 224.

An admission of the party the not under oath is admissible is admissible. Thus I have seen some cases where it was disputed,

Confession

Proof of any thing is not in the nature of the thing, until he could contradict it. It is considered as an admission. For even if of such a nature and under such circumstances that he might be exhorted to retract it if false - yet an admission of the truth of it is not retractable. 7 Reg. 66. 2 Stra. 1094.

To allow an agent has said may be admitted as evidence, & is the same as the law for a witness who has made his statement. But it may be admitted. It has the same last requirement. The law of the wife is in regard to her admission. If the wife is sworn to, it is not like a party to say it is for such that is good evidence to her such matter as is usually left to the verdict of the jury. It is probable her own efforts to admit it, for it tends to her discovery. 1 Stra. 527. 1 D.R. 65. 1 Esp. 142. 62. 8. 65.

It is often by way of compromise made to evidence to force and otherwise. It is not said to be true in any other case, but merely the giving a certain price rather than go to law. Yet if the witness is not the one of the whole his evidence is not valid.

11th. R. 131

A confession of a criminal before a Justice or J. of Peace, if voluntarily made is evidence. It is if obtained by threats or promises. 11th. R. 131.

It is in consequence of such promise that

Evidence. I

findings, they may show that by his education they lost their
 lives, but not that he confessed that he put them there.

Leach Com. law. 299.

Of Witnesses who are incompetent. The first ground of in-
 competency is want of discretion. Poets and lunatics are not allowed
 to testify. As to the age of children, the law is quite vague. There is
 no doubt they are good witnesses at the age of 14 in old cases, so that
 they are incompetent under 7 - between those ages they are at the discretion
 of the court. Gold. Cr. 149.

But it has lately been decided that age is no objection provided
 they are found the nature of an adult. 3 B. & P. 273 3 East. 223 1
 Leach Cr. 1455.

Deaf and dumb persons have been admitted when it appeared
 from signs that they understood the nature of an oath. Leach Cr. 1554
note as to presumptive Evidence see. 2 Co. 5. 22 R. 599 2 Stra. 326. 2 W. 371
 18 R. 332. 10 Reg. 139.

Secondly. I shall speak of those persons who are impaired,
 who are so that cannot affect as witnesses. Some of them are
 totally incompetent, others are competent but their credibility
 is impaired, and the quantity of their credibility being almost estimate.

The words competent, and credible are by no means synon-
 ymous the former signifies admissible. The words credible however

in the that more than persons to whom no such credibility is
given as to men in general.

The credibility of persons who are infamous defectors upon
their general character. Particular facts are to be inquired into,
but it is not supposed to have prepared to defend individual
acts - Ed. 276.

In General there has been great excitation from the
low tone of the press. The low tone interests and excites. General
character is the first place what was in general terms of
low. It is agreed in France down to what extent. He would believe
him on every off he assumes in the negative to a proof that he
is not to tolerate with the press men believe him or not. This
is the matter in Eng.

as to be different. The belief as we have arisen from
cannot having seen his defects and consequently being
ignorant of their value. If a witness should be brought before
us of the press in this point we must not allow inquiry to be
made as to the person character for truth and veracity. Not
whether his General character be such that he must be credited.
It is all probably as we had seen the facts who would
be credible solely as to his character for veracity, for he has no

character. There is a very great deal of time wasted in the case of
Harrison, for we find in his report nearly every point every
thing by means of fresh papers, and with any one who reads their
tenacity, it is as getting back to the beginning.

But still a man has no right to require that he should get
the party bringing forward the objectionable evidence may in-
quire into the testimony which is intended to impeach the other,
in the case there is not sufficient ground for saying that the
evidence is to be credited or not - and as to the question
whether it is to be credited or not, the court of the party impeached, and
if the fact is not in the case, it is not right to say of the State has
not the right to do so.

There is another mode of impeaching witnesses, viz.
by showing that the witness told the story different at other
times, and in other places - the first objection was not made
until, yet the evidence extracted from his testimony.

It is not true that the jury should be told that the witness
on the story the witness told at the trial - the directly oppo-
site to the one he told under oath. But this was wrong, it
was far, for it ought only to detract from his honest testimony.
S. B. 12-44

Ep. 200.

Bygone a man can never retract his own writings. There is
greatness in firmness of belief; the contrary would be
indign to all who respect him for the purposes of bringing them
to frame. B. 10. 1. 2. 3. 4. 5.

But the only way not to retract his own writings
as to his general reputation, yet he may always preserve
his credit what his writings state. As if they state that
they were in Litchfield on June 1 day he may prove they
were in Boston.

Thus far of writings who the not inconsistent are
incredible by reason of infamy.

Of infamous writings who are inconsistent.

What is more guilty of the same crime is inconsistent. If a man
is more guilty of the same crime which you are really to infer on a man's
integrity. That is, if it is not inconsistent that a man's
writings be - i. e. But some writers object from the consistency
of the writings which do not amount to a man's false. Belong
ing to a method. B. 10. 1. 2. 3. 4. 5.

It was formerly said that having seen a letter was a case
of inconsistency. But it was felt that it must adhere to have
been sufficient to a man's false. Elementary writers say that

Reason only seems to condemn it. But I don't believe that
 reason is common false eye judge here.

General rule is that a man is competent like he is a witness of
 the witness false and then it must be proved by receding to the
 record. This is sometimes inconvenient when the record is at a dis-
 tance. Indeed if the Party is surprised that may lay a founda-
 tion for a new trial. 3 Leo. 420. 601. 6. 1689. 2. 618. 182.

There is one mode of impeaching now resorted to which is
 different from the one already mentioned viz asking the witness as
 to the fact of conviction. 1 Sid. 50. 40. 2. 1640. 1. 3. 18

Formerly it was said that you should not require a witness to
 expose his own wickedness. But now tis settled that you may compel
 him to testify, when his evidence will not expose him to punishment.
 If his testimony would expose him to punishment, he shall not
 be compelled to testify. So a woman who has had a husband will
 be obliged to testify as to the father, for her testimony will not
 render her more infamous.

I would object to her testifying on another ground for be-
 cause the father is married and to expose him would be to dis-
 turb his family peace. 40. 2. 1640. 1. 153.

This signifies a incapacity

1840

1. The first of the year was a very cold day, with a heavy frost, and a strong wind from the north.

2. On the 2nd, the weather was much warmer, and the wind shifted to the south.

3. On the 3rd, the sun shone brightly, and the temperature rose considerably.

4. On the 4th, a heavy rain fell, and the wind shifted to the west.

5. On the 5th, the weather was calm, and the sun shone brightly.

6. On the 6th, a heavy rain fell, and the wind shifted to the north.

7. On the 7th, the weather was much warmer, and the wind shifted to the south.

8. On the 8th, the sun shone brightly, and the temperature rose considerably.

9. On the 9th, a heavy rain fell, and the wind shifted to the west.

10. On the 10th, the weather was calm, and the sun shone brightly.

11. On the 11th, a heavy rain fell, and the wind shifted to the north.

12. On the 12th, the weather was much warmer, and the wind shifted to the south.

13. On the 13th, the sun shone brightly, and the temperature rose considerably.

14. On the 14th, a heavy rain fell, and the wind shifted to the west.

15. On the 15th, the weather was calm, and the sun shone brightly.

16. On the 16th, a heavy rain fell, and the wind shifted to the north.

17. On the 17th, the weather was much warmer, and the wind shifted to the south.

18. On the 18th, the sun shone brightly, and the temperature rose considerably.

19. On the 19th, a heavy rain fell, and the wind shifted to the west.

20. On the 20th, the weather was calm, and the sun shone brightly.

21. On the 21st, a heavy rain fell, and the wind shifted to the north.

22. On the 22nd, the weather was much warmer, and the wind shifted to the south.

23. On the 23rd, the sun shone brightly, and the temperature rose considerably.

24. On the 24th, a heavy rain fell, and the wind shifted to the west.

25. On the 25th, the weather was calm, and the sun shone brightly.

26. On the 26th, a heavy rain fell, and the wind shifted to the north.

27. On the 27th, the weather was much warmer, and the wind shifted to the south.

28. On the 28th, the sun shone brightly, and the temperature rose considerably.

29. On the 29th, a heavy rain fell, and the wind shifted to the west.

30. On the 30th, the weather was calm, and the sun shone brightly.

31. On the 31st, a heavy rain fell, and the wind shifted to the north.

Indecency

to testify is removed by pardon under indeed incompetency is a part of the punishment prescribed by the Statute. The distinction on this subject is this - where incompetency is part of the punishment directed by law - pardon does not remove it - also, where the law merely says such persons are incompetent. It appears to me as forgiveness is matter of grace to change that this should make a criminal a new man. There is no reversal of judgment for that must be affected by court of error. Does his being forgiven make him a less dangerous man? This is certainly 'destitute of principle. In what respect this is applied in the U. States I know not. 1 Salk 289. 1 Vent. 349. Ray 380

In Council we have admitted as witnesses persons convicted of the crime of perjury. In one case a lad of 18 was drawn into a gang of counterfeits, and convicted of perjury. Afterwards he was always a man of integrity and acquired a large estate. At 60 years of age he was called as a witness and objected to - The court admitted him. They said the reason of the objection was that a man who had been convicted of perjury was presumed to be a dangerous one - But in this case the presumption was removed by the regularity of the man's subsequent conduct. There was another decision of the same kind.

1 Vent. 349 or 149. Salk. 289. Ray 380. Leach c. 1. 75.

With respect to persons who are incompetent by reason of their in-
firmities (mentioned on the next page) Judge Lewis observed that
Universalists would be excluded i.e. that class who do not
believe in Purgatory.

With regard to benefit of clergy, I will first mention its origin. Formerly great respect was shown to clergymen accordingly the severity of the law was much mitigated in its effects. In reading, was a great mark of learning in those days of ignorance, every one that could read was allowed the benefit of clergy in case of the clerical error. But a distinction was made between laymen that could read and the clergy, for the former were branded in the head, nor could they claim the benefit more than once. A person convicted of felony is after being sentenced to be branded by the court gets it goes to be sure to his discredit. Ray 369. Ashby 37. 110. 51.

A person who in fact is a minion may be admitted as a witness in a civil case. I think civil law sometimes recedes from admitting such testimony. On this ground the greatest villain has been exonerated. Baker 280. Gibb 6. 139. Leach 6. 184.

I shall next speak of persons who are incompetent on account of their principles. At common law professed atheists have always been excluded. The common law requires all evidence to be sanctioned by an oath. But an atheist can't take an oath or if he does it imposes no obligation in his oath.

This exclusion was formerly extended much farther than it is at present. The alteration has been effected by the good sense of the judges, and not by any statute.

Evidential

Witnesses or very profligate persons persons between these two classes, are probably influenced by them.

Of Persons incompetent by reason of interest in the cause.

The general rule is that all persons who are interested in the event of the cause are excluded. This interest in the event need not be direct it may be consequential. Thus if C is bail for the Deft. as upon judgment is returned, now as the case may be the bail may be liable. So if the Deft. should not pay, or pay, nor pay under himself at, then the bail will be liable - now the interest is not direct, yet it excludes.

So again if a warranty pass through several hands and an action is brought against one of them, no other warrantor shall be allowed to testify, for if the Deft. gets his case the other warrantors are secure.

So whenever a judgment might be made use of to show a witness's liability he ought not to be allowed to testify in order to prevent that judgment.

Of an Interest in the question.

It has been lately decided that an interest in the question does not exclude. It goes to the credibility but not to the competency of a witness. 4 Burr. 2255. famous case. Feb. 27.

The case in Burr on laid the foundation for the other decision. This law has been adopted by most of the States and with some.

Let us suppose a case that will give what is meant by an interest in the question. A tradesman has two subscribers to a paper, each of whom owes to the amount of £100. A paper is offered for sale, and he gives one of them, how he may prove by either of the other nine that it was a fraudulent representation to him, and of course the contract was void & yet the others may think that they shall get their cases for the same reason. But as the case may be all may get their cases but one, and he still fail for want of proof. So if A has committed an assault and battery upon B and it is promulgated by the public, B is a good witness yet he may want to have him, banished from motives of revenge. This is an interest in the question. An interest in the question then never excludes in civil cases, but not admiralty in criminal cases. Leach 154

I will now point out the cases it formerly stood. An interest in the question always excludes in civil cases, and admiralty in criminal cases. The reason for this difference between criminal & civil cases I can't discover. There were anciently three criminal cases in which such an interest excluded from testifying viz. Rape, Burglary, and Treason. But in actions for breach of peace, the interest did not exclude. Why this distinction? I will hazard a conjecture

Evidence.

in the subject.

But does that the fact of the forgery of a note is not a sufficient evidence when the party himself is who they should be to be rejected to? I believe this to have been the reason that is necessary to introduce the note into court, and then as soon as it is proved to have been forged, the court cancel it. In an case in Burying the Lord Chancellor says is the practice of the court to cancel forged instruments. A similar reason may be given for the case respecting the case of Henry.

In the case of Leary the reason is a different one, for if the bill is cancelled of Leary the money received £-10. of course he was interested in the event.

In these three cases in interest in the question were excluded in Eng. 12 260. 272 17. 18th 250. 11th 251.

There is one case of this nature the principle of which has been characterized by all subsequent cases. A man by a bill must & a woman give a note of £ 100 when it ought to have been but 10. She was prosecuted as a cheat. But the the woman was not interested in the event yet she was rejected. 10th 491. 11th 494. Leach 11. 255. 725. 2d 2451. 2d 725.

Suppose a man actually lays more than lawful interest for the loan of money together with the principal how in case of a foreclosure in Henry shall he be allowed to testify? It was said he had no interest.

when the cause arose up. But I think the case would be otherwise
 here, for he might have an action for money had and received for the
 surplus over principal and interest. So if an interest in the question
 does exclude in the case of money, it ought in that case.

- A party in a cause can't testify - altho if he has an interest.
 If a trustee brings an action, or an administrator having a bond
 of indemnity, he may be a witness, for nothing but an interest
 ought to exclude in a pecuniary interest. Gibb. L. E. 120. strong, Forbes vs
Robson. 1 P. W. 290. 2 Ha. 1026.

But here is a good witness, in his father's cause tho he may have
 strong feelings - his relation to his father may go to his credibility,
 but not to his competency.

A Guardian can't always be admitted to testify, for as the case
 may be if he lose his cause by folly he will have the costs to pay
 out of his own pocket, unless under he have a bond of indemnity.
 2 East 7.

Members of a corporation are not allowed to testify in favour
 of each other where they have an ^{individual} interest. Secus if they have an interest.
Oak cas. 153.

Suppose a question to arise about a tax for supporting the poor,
 if any of the corporation or town are exempted from taxes, he
 may be admitted.

Evidence

It sometimes arises that a small interest does not incapacitate.
But too difficult to know what a small interest is. We ought to
have a rule that is general - so I should say any interest in the
members of a corporation ought to exclude them.

In Connecticut we admit members of the same corporation as -
witnesses. We however except the person who carries on the business
in behalf of the corporation, on the ground that his feelings are inter-
ested - we do not admit them however where other evidence can
be obtained. See 22. 2 Haver 47. 12 A. 157. 100 356. 1 Mot 92. 1 Wh. 144
Green 206. 239

Exceptions to the rule as to interest. The ground of these ex-
ceptions is necessity. Sometimes Statutes have made them and
sometimes courts.

The P.P. is sometimes admitted to testify. Thus in England
it was decided by a Stat. that if a hundred in which a robbery
was committed should not make true and say, it should make up
the loss to the person robbed. The Stat. however said nothing of
the mode of proving it. The court therefore said the party offered
might be a witness to prove the fact of robbery aliter than would
be no proof, and of course the Stat. would be negatory. He could
not testify as to the amount of the sum taken. But as to that

the jury were not bound to believe him. 2 Roll 585.

Hence we learn that when the Stat enacts that a person may bring an action, action and that suit to substantiate, unless the Plff himself may be allowed to testify he may be admitted provided he would otherwise incur an actual loss of property.

But when there is no loss of property, but the action is brought merely to recover a penalty, he shall not be admitted. So J. J. Fay entered in New Haven and there are precedents cited in Parks' Principles to support it.

In one instance an action was brought for a malicious prosecution. The prosecution had been for the Plff, and in order to prove malice the Plff in the action said there was nothing stolen. Hence the oath of Deft's wife made at time of ^{former} prosecution was received. So this shows that in some cases a Plff and his wife may be admitted where it is necessary. 6 Wm 216.

Concerning the admission of informers see 10 Mod 14. 10 Hk 515. 18 J. 95. 10 Hk 518. If property is stolen in secret from a person he may have an action of trespass against the thief and recoverable damages. In this case the Plff would be allowed to testify that the goods were stolen, but not that they were taken by Deft. In Massachusetts I know a case where the Plff was allowed to prove that

Evidence.

The Deft. pleads them.

To argue in this case, that if a secret assault and battery is committed I may testify that it was committed by Deft - yet he may not testify as to any consequential damages.

If the assault is not proved to have been committed the action will fail - yet if witnesses were concealed on purpose to defeat the action when it may be brought, their testimony shall not have the effect.

If a person who is not a competent witness is present, still it will be deemed a secret assault - so if the witness be extremely prejudiced.

In contracts in actions of Book Debt we admit both parties to prove as matters of convenience.

In action of foreign attachment the Garnishee may be called on to testify as to his having the Debtor's effects in his hands, may be sworn, claim the privilege of thus testifying. Thus on a *quære facias* issued in judgment obtained against the Debtor the Garnishee is to come into court and may there be a witness both for himself and for the party who called him thither. X

In some cases the privilege may be very important to the Deft in a *quære facias*, for as the case may be his having paid over the money is known to no one but himself.

If the Law in Chancery I will now mention the law in Chancery. In filing a bill in Chancery you have a right to call on your adversary to testify, unless indeed his testimony would subject him to punishment.

It is necessary to state in your bill that you cannot prove the fact otherwise. Still if the Deft cannot come in and testify he is not in contempt - now the bill is taken pro confesso.

Deft may also in his turn call on the Plff to answer and if he refuses - no evidence to oppose what he was called on to testify with be admitted. The answer of Deft in this case must be made under oath. But in Court it is not so made usually still if the party wish it it must be so made here also.

Since a witness is made Deft on purpose to prevent his testifying if no evidence at all is introduced against him the court will order his name to be struck out. In this case the court judge of evidence, the in ordinary cases this is the province and prerogative of the jury.

If however a little evidence only is introduced against the party thus made Deft the court will allow him to be his own witness and then he will be allowed to testify. Gillet's Ca. 184. Ex. 12. Ward vs. Haydon. 384. cas. 25. contra and Raynes opinion.

Conscience

So if two are joint and one suffers ^{jud^t to agree by turning guilty} default, he may then testify against the other. The principle is the same if two are indicted and one of them confesses his guilt he is admitted to testify that his name is on the record. 1 Sha. 698. 2 Esp. ca. 552

In an action of account, the Def^t is admitted to his oath. even at Com law or in a capital case. Besides there is a special confession required, in those cases. So he sure the party will not be allowed to testify that he was never Bailiff, this is capable of other proof. But before the auditors he is allowed to testify.

The case of agents is a remarkable exception to the general rule. Agents are interested in the event of suits in which they are allowed to testify. So if money is sent to a third person in their name by an agent, he may testify as to the fact of its having been paid him, yet unless it is proved to have been paid, he will have to pay it himself, and this very judg^t may be used to prove that the employer paid the money. 1 Sha 657. 2o 506. But ch. 2289. 10 Alth 287. 7 Wm. M. 590. 87 R. 454. 7 do 666. Peck ca. 129

Rewards are often advertised for taking thieves and securing them so that they may be prosecuted, how can the persons thus apprehending be admitted as testimony to show how they were apprehended, and under what circumstances they were found.

very one is compell'd on the ground that the facts can be shown by evidence - how this case analogous to those where parties only are just for, for if ^{reasons} every could be heard, there would be a great loss of property. In case of battery, one may be admitted as a witness against the rest - then if three join in committing a battery on a fourth person - he may sue at his election, one, two or all of them. If he sues two only the others will be allowed to testify against them, yet if they are convicted, that would be a bar to any further action - Whereas if they are acquitted, the other or others are still liable - yet the interest is very obvious in these cases. I suppose this arose from necessity originally and thus it grew into a general rule. See Black 353.

When indictments are brought ag. the members of a town or county for not repairing a bridge or the like - the individuals can be witnesses. Their interest is remote.

It appears to me there is no necessity to justify this exception for there are always some in a county who are exempted from taxes. I know some say there is no interest in this case because if the bridge is repaired the witnesses will have a good bridge to pass over, but notwithstanding this I think there is an interest. Gill L. E. 129. or 329. 1 vent 357. 6 mod 307.

Endorse

A person who has an accruing interest, may not be a witness as a witness. an accruing interest is one in expectation from a promise or the like.

There is a Case in an action of ejectment promises another that if he recovers in the action, he will lease the land to him for an equitable price. I suppose the witness is excluded in this case on principles of policy. To be sure his having the land may be matter of convenience, but that is not a sufficient objection for if a man is to get his debt by another recovery, yet he may be a witness.

The truth is, if the rule were otherwise it would do more harm for a great deal of perjury. Thus he might promise to let him have the farm for a little less than other folks. There would be room to tamper with the witness. Comp. 691.

But since the Stat. of frauds and perjuries, a parole promise is not binding. Under this Stat. would such a promise exclude? Why here the witness is to be examined on a voir dire whether he thinks the other will perform, being a man of honour. So in the other cases of witnesses think themselves bound to omit all in honour in case one of the parties loses his case, they must be excluded.

1. Feb 129.

A man by his own act becomes interested in the event

after the fact is commenced, still he may be called as a witness.
b. If he gives bad or false a wager. Sta 652. 17 R. 27

If a man who is interested releases his interest this will answer
all objections. His rule opens a door for much fraud. For releases
which are executed at the bar of the court are generally a mere
fraud. It cannot be prevented. Doug.

(See R. 64)

There is a very interesting question concerning instrument-
ary witnesses, like those to wills. This has made a great figure
among the modern judges in Eng. viz whether by the words of the
Stat the witnesses were to be credible a competent at the time of the
attestation, they can become good by matter or best factor
or at the time of proving the will viz. whether if the witnesses
were non credible at the time of attestation, they can become
good by matter or best factor or by a release of their interest.

Before the Stat witnesses were not required to be witnesses
released his legacy he became a good witness.

Afterwards the Stat required three credible witnesses. Now it is
said if a lunatic should witness a will and afterwards recover
his reason the Stat would not be complied with. The same is
true of an infant. And it is further said that the case of in-
terested witnesses is analogous to those just mentioned.

Bridgman

When the question was first stated it was decided that legates & notaries were not good witnesses. This gave great alarm, for it most generally happened that wills were attested by servants to whom wages were due, by apothecaries or attorneys, whose very attendance made them creditors or by the minister of the Parish.

This convinced the Stat 28 Geo. II which restored to the competency and the credit of Legates by declaring void all legacies given to witnesses. The same Stat restored the competence of creditors by directing them to be admitted, but leaving their credit to be considered on all the circumstances. 3 B.C. 381. 2.

But the Stat did not cover all the cases and the question was raised a second time. Lord Mansfield gave a most learned and elaborate argument on the subject in which he attempted to show that the non availability might be purged by extrinsic facts. Two of the judges harmonized with him in opinion and five held a different opinion.

The question was again agitated before Lord Camden who opposed the opinion of Lord Mansfield in a very learned argument, the three other judges were opposed to Lord Camden.

So that taking the two decisions together we have the

opinion of the judges in favor of each side of the question
 in several our inferior court reads as our Manfield did
 the Court of Errors differently. In Eng? it is still quæstio verata.

It appears to me the Subject may be simplified. I do not
 think the Legacies were non credible at the time of attestation. If
 but were the case, even the non credibility cannot be purged
 by matter or post facto in the case of infants and lunatics attes-
 ting, there is non credibility at the time of attestation, for
 surely they cannot tell whether the Testator was sane or signed
 his name. We here his absurd to say the defect can be purged.

But the case of interested witnesses is different, indeed they
 have an interest except a contingent one for the will is unen-
 lated till testator's death. But a contingent interest is not suf-
 ficient to exclude — Thus an heir has a contingent interest, yet
 he is a good witness — The same may be said of all a man's rela-
 tives who may in a certain event be his heirs at law. This
 produces a bias, but a bias does not render them non credible —
 Thus a child may be a witness for his father and yet he has a
 bias. But on the death of the testator the interest becomes vested,
 and then the witness becomes non credible, but this interest as in
 other cases may be released. It cannot be said of them that

Evidences

they may say, however, at the time of attestation he took with
shut eyes upon the transaction. 2 Hia 11 a 1253. Bann 417.
See marginal page on 6 days cases for Candius opinion.

There is one case in which the sanction of an oath
is not necessary to make evidence admissible viz. what a man
says in contemplation of immediate death. In articulo mortis, is
good evidence.

So if a man is fatally stabbed, his declaration is good
evidence against the perpetrator, provided he is under the solemn ap-
prehension of death. So, it is not. So if a dying man says
there was fraud in the execution of a will.

I am now on the subject of releasing interests. Courts have de-
cided or said that there is one case in which a man cannot re-
lease. Thus if there are several warrantors of the same title to
land in a case where the warranty runs with the land. Now
suppose D is med. can C who warranted the land to D be admitted
for the purpose of establishing the point that D, had a good title,
would D still release all claims he may have upon him?
It is said he cannot for C's warranty was not only to D, but
to all mankind, of course the whole interest that exists cannot
be released by D. The warranty, was with the land ~~and~~ to

whomsoever I may sell, C. is bound to make good title.

2 Loh 682 n. 5.

But if there had been no covenant of warranty in the case above, it would have been a good note, for if he had given only a quit claim deed, for in that case there would be no interest which could be brought against C. in such a case, so it is in Connecticut.

But it seems now a man who gives quit claims may be liable, as if the consideration wholly fails. Thus if it appears that the vendor had no title at all, but sold mere moonshine - here as the consideration into the money ought to be received back, especially as it was not intended by either party as a bargain of hazard. As this is more now than the rule I think it ought to alter it. Here clearly is an interest, since if he passes title in the debt, he secures to himself a sum of money, which he would otherwise have to give up.

If the bargain had been intended as one of hazard, the case would be different and the court would not interfere, as in case of annuity.

There are cases of contracts where persons are bound jointly and severally, and still if one is sued, the other

Evidence.

may be a witness, provided the Deft releases all claim against him, so that he can't compel him to contribute in case he loses his cause. 5 Burr 2727. 3 T.R 388 or 308. 1 K.B. 313.

There are some insulated cases in which persons interested may testify. So if voluntarily escape happen the person escaping may testify that it was voluntary, and thus clear the whole scene on the Sheriff, and clear himself of complicity.

The reason is the fact is of such a nature that none else can know it. If the escape is negligent the escaper has no interest. So in case of rescue the person rescued may testify as to the fact of the rescue - yet this is placing his own debt on the rescuers. But N.P. 67. 6 mod 211. 10 mod 124.

Of Relationship.

In very few instances does this exclude.
Husband and wife cannot testify in favour or against each other. The object of this rule is the preservation of domestic tranquillity. ^{Suborned to a dangerous lie, no one relation duty is broken is from this rule.} They will not be allowed to testify even if the parties are both willing - whereas in other cases objectionable evidence is frequently admitted if the parties both consent to it. As a man may testify against himself if he pleases, and his

testimony is good evidence. Hale. R. 284 for the reason But. Ch. 286
2 Fra. 1095. 43. 2078. 22. 263

In the rule respecting husband and wife there is one exception viz. in case of reason. The reason given for it is that the public good ought to be preferred to every other consideration. I doubt whether this rule will be adopted in this country. Indeed in Eng. I believe the authorities confine the rule to cases where the reason is against the person of the king, indeed it is questionable whether there is any such rule. Brown. 47. 2 Felt. 403.

If a public prosecution is instituted against the husband for personal abuse of the wife - can she be a witness? In Lo. Chadley's case she was admitted. - This case is the most disgraceful one, in the books, it is said the judges hate the law there. Holbro. 115.

In a case in 1833 she was admitted without any question, Hence I conclude that there was an intervening case which we have not received. It seems to be now settled that she may be admitted in case of personal abuse. Some say it puts the husband in the wife's power, but the contrary rule I think would be more dangerous, as it would put the wife in the power of the

Evidence

Husband Both husband and wife may swear the force against each other, but this is no punishment. Bald V.257.

In one case a husband brought an action alone, and he introduced the husband to swear that he was his husband. The court would not permit it. 2V.R.268.

Of Counsellors at Law.

An attorney is not permitted to testify with regard to any facts which have come to his knowledge by reason of his acting in the capacity of an advocate. Indeed he would not be permitted even if his client should consent to it.

This rule seems confined to a single relation. 4V.R.758, 531.

Peck on 99. m. 846. Alb. 185. 4V.R. 441 & 441.

Friends are compelled to testify ag. each other relating to matters that were communicated in perfect confidence.

I should have been willing to have established the rule, the other way - Indeed it has been attempted in many of the States, but without success. The most modern cases on this subject may be found in Peck's cases 177.

A new principle was introduced in the time of Lord Mansfield which is now given up viz. that where a man has once given currency to a note or instrument by putting

his name, so it be shown, for he is stopped from impeaching it. E.g. an indorser of a promissory note shall not be allowed to prove it usurious. This was an innovation, for clearly there was neither infamy nor interest. This was an instance of the court's making law. 1 D.R. 278.

It has since been decided not law. ^{37 R. 27} 37 R. 601, to a witness to a will may swear that the testator was of sound memory, tho' his attestation speaks a different language. 3 Burr. 1244. 1 D.R. 365. 1 D.R. 224. + Parol testimony is now closed, except some observations on inadmissibility. The grounds of inadmissibility are very important to be known.

1. Parol testimony is inadmissible to prove written contracts, tho' not required by law to be written. The reason of its inadmissibility is because it is reduced to writing, and if admitted would be a violation of a grand rule before laid down viz that the best evidence which the nature of the case will allow must be produced.

Parol testimony is rejected not because it is not good in its nature, but because written evidence is better. Written evidence speaks truth but witnesses may forget. Also parol is not admitted because it is manifest to every person that where there is a written contract, there must have been a parol contract first,

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and therefore the written is best and most binding.

In all contracts, if they have been reduced to writing, parol is testimony to prove them is nugatory. The only question which remains is, which evidence parol or written is preferable? The written certainly.

Another ground why parol proof is in this case inadmissible, is, that the parol contract is absorbed in the written one. When the plaintiff offers to prove the bargain by parol testimony, you cannot object to the declaration, because not averred to be in writing, but must object to the admission of the testimony.

Exceptions to the last branch of the rule viz if the writing is lost and cannot be shown, and can be proved to be lost, parol testimony of a certain kind is admissible - as if the house containing the writing is burnt. The proof must be such, by facts and circumstances, "to induce the court to believe the writing lost."

You cannot introduce previous conversation about the contract, but the contents may be proved in the contents of the written agreement.

Another exception on a different ground. If the written contract is in the hands of the opposite party, and they will not produce it, what will you do? Here you may show the contents

if you can prove it not, show the previous agreement.

But say they the previous agreement is absorbed by the written one. It does not go on the ground of showing different contracts but the same. In this case I take it parol testimony is admissible.

In the former case you prove the contents, and in the latter you do the same, but by the previous agreement.

The presumption is always that the writing is as both parties agreed if not it may be uttered in a court of chancery - This has been some to my knowledge - infrequently however.

Parol testimony may be admitted in a court of Equity to show a mistake.

The next class of cases is that which comes under the Stat. of frauds and perjuries, which Stat. requires certain contracts or agreements to be in writing. Of course parol testimony is negatory and cannot be admitted.

The objection is not that it is a written contract but that there is more when the law requires it. This is all brought about by Stat. I know of only one case by com law viz. indentures of apprenticeship.

Here in the other case the action need not state the writing in the declaration. A. promised B. £50. and B. sees. 4. without averring it to be in writing, yet you cannot remove.

Evidence.

The agreement is objectionable, only that the law requires it to be in writing, and yet it is not.

Sometimes the law requires that the writing should be a deed, then it must be a deed. Therefore if one claims title to land by a memorandum you may object to the writing, because the law requires that it should be a deed signed, sealed, and delivered to claim title.

But in Equity the court might compel the person to give a deed by means of the memorandum, and this is not wholly inefficient in law. But if the question is for title to land, but if to gain a title to goods, and is ground for damages.

3^d Clasp of Cases. Is a general rule to which there are apparently many exceptions that no parol testimony is admissible for the purpose of adding, explaining, enlarging or diminishing any written agreement.

Why do you want to explain? Because it is ambiguous. General rule you cannot do it - you can only prove the substantive part of what is no more than the deed declares. The construction of a deed to be conclusive - this is not material.

Will now point out some exceptions to the above general rule. 1st Where the ambiguity is patent you may not introduce

proof testimony but must collect it from the meaning, & it is
 assumed that it cannot be explained or corrected at all, is good.

But if the ambiguity is latent and not apparent, arising from
 something wholly extrinsic you may introduce hard testimony to
 explain it. Thus suppose a man has two sons of the same name &
 he gives his land to one of them, you may prove which by
 hard testimony, no ambiguity appears on the face of the instrument.

So if a man gives his property to a charity school in his society
 there is no ambiguity, but it happens that there are two charity
 schools in that society, one he liked and the other he disliked, now
 you may prove which he meant by hard testimony. Also a wife
 gives her property to her cousin E. B's four children, but there are
 six two by her first husband who are well provided for and four
 by her last husband who are poor, and she has often said that she
 intended to give her estate to the four poor ones, and that the other
 two were well enough provided for. Now you may prove that she
 meant the four poor ones by hard testimony. This is admissible.

The testimony must stand well with the will i.e. it must not contra-
 dict it, but as long as it goes hand in hand with the agreement, or
 rather the instrument, hard testimony is admissible.

Evidence

It often happens that these cases are void, on account of uncertainty, as 'I give my estate to the two best fellows in this city.' But if parol proof can stand side with the instrument it cannot be admitted.

It is universally true concerning patent ambiguity as applying to the construction of testaments that no parol testimony is admitted to explain any part, but the meaning must be gained from the instrument. But as it respects more words and technical terms of equivocal import the rule does not hold, parol testimony may be introduced to show what was intended.

As a devise to senior heirs is equivocal because that term sometimes means male, and sometimes female, and therefore parol testimony may be introduced to show which is intended.

But these terms may become equivocal by a man's circumstances - Thus a man devises his farm called black acre to J. S. and his children, here an estate tail is clearly meant, because J. S. has no children and is not even married.

Again the word estate was formerly an equivocal term, however it now settled. To say I give all my estate is equivocal.

What is meant? Did he mean to give a fee simple or an estate for life? If he meant to make it out here then he meant an estate

for life if he intended to give all his interest in the estate he meant to give a fee simple.

The meaning is gained from the circumstances of the property. Thus a man devises a farm worth £1000 to John on condition that he pay a rent of £200, but there is only £100 of house and property and if his intention is to leave an estate for life he is a trustee but he is meant here for an agent of the family, therefore his testimony may be introduced to show the ambiguity and that a fee simple was intended.

Further, when words have a legal precise and appropriate meaning, that meaning is to be taken, but when so taken it makes nonsense and renders the author ridiculous, and by giving the words the meaning attached to them in common parlance it makes sense, it may be so construed, and parol testimony introduced to prove that was meant. ✓

Thus J. L. devises to Tom Stokes that famous Bole house in London, and a lawyer upon inspection says an estate for life is meant but J. L. already has in it an estate in fee tail and J. L. proposed only the remainder in reversion and that doubtless he meant to convey. So also a woman gave an estate of £500 long annuities and the residue of her estate to the Faneloes, if she meant to give so much stock as to raise £500 a year, it would amount to a

that sum paid her whole estate was not equal to it, but if she
meant to give £1000 to be used for any purposes, it makes
sense and leaves a handsome property for the legatee - Hence it is
universally, here that if the meaning according to the precise
technical terms makes its action ridiculous and would defeat
the intention of the will, you may give it another construction
that will comport with the will and with the state of the property.

The great object of the law is that you shall not intro-
duce parol testimony, to explain, enlarge, or diminish the sub-
stantive parts of a will or written instrument.

We come now to another class of cases.

Altho you cannot introduce positive and direct
parol proof to give a different import from that which the in-
strument itself plainly implies, yet you may introduce parol
proof, to show facts, by which a different import may be given to the
instrument.

Thus a man gives an absolute deed of his farm worth £
10000 for a debt of £1000 now you cannot introduce parol tes-
timony, to prove from the terms any other agreement, but you
may by parol proof show it to be a mortgage from extrinsic facts.
You can't prove it from the terms themselves - Let the person

suffer for his carelessness rather than break in upon so solemn and salutary a regulation.

The law is made to guard against varying the terms of a written agreement, but you may prove facts relating to it by parol testimony.

If you can prove the agreement without stating the terms of the instrument you may in any way, but there is hazard in introducing witnesses to prove the terms of a contract.

Again a man knows of a farm to be sold and he advances £100 to his agent and sends him to purchase the farm, and tells him to take a title to him or to himself, and he takes a title to himself and retains it - what work you do. You may have a reaction of apartment for money had ~~and~~ received, but you want the farm and he has the legal title. Now you may prove that your agent had no money of his own, that you had conversation with the owner of the farm respecting the purchase and further you may prove by witnesses that you delivered to J. S. £100, for some purpose. On the other hand a man employs another to sell farms for him, as he has much business and can't attend to it, at length the agent sells some and keeps the money, here the remedy is as in the former case to prove by parol testimony facts relative

Equity

to the business and thus recover.

Parol testimony is always admissible to rebut an Equity. It often happens that an equitable construction is shut out from the legal construction. The legal construction can never be invaded by parol testimony, but an equitable construction may be rebutted by parol testimony.

Now what seems your plan for a mortgage to be redeemable in a Court of Equity, but in law to be an absolute deed.

It is a rule of law that if a man devises his estate and there is a residuum that residue goes to his Executors. But in Equity it holds that if there is a large legacy left him as a reward for his trouble, that the residue shall be distributed to those entitled by law.

This Equity may be rebutted by any parol testimony you can produce. Thus John by parol has heard the dying man say, I give the residue of my estate to my Executor.

Parol testimony may be used to restore the legal construction against the invasion of Equity. The equitable construction may be rebutted by hard proof.

Thus A mortgages his estate worth £3000 for 1000 and afterwards the mortgagee borrows 2000 more, now shall he have an equity of redemption upon paying the £1000? Court of

If I equally say so, unless you say the other \$2000.

One thing further presumptive proof applies to very many cases. In this case you have a set of facts which lead to the belief of other facts. This is presumptive proof.

Thus the presumption, premises of a note having paid the money without having taken up the note after 20 years have elapsed is called upon by the promisee for the money, during that whole period they have lived neighbors, and the promisee has borrowed money of the promisee, and has used or consumed the money till this time. This affords strong proof that the note has been paid. The ^{law} presumption requires such a set of facts to be proved, as that you cannot upon any rational hypothesis conceive the existence of these facts without inferring the principal fact. Whatever is probable ought to be left to the jury, unless facts show to the contrary.

It is a rule that hearsay testimony is inadmissible, the reason on which the rule is founded is, that all testimony must be under oath. What a man swears that he heard another man say in court is admissible.

The exception to that rule respecting hearsay evidence shall now be mentioned and 1st What a man says in articulo mortis i.e. in contemplation of immediate death is admissible.

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This being an evidence matter is not of itself ground for the admission, but he must support himself in that position.

Again what a man asserts of himself is good evidence. 7-1893.

There is a danger of saying for men are so inclined to confess against themselves none other is true. So this rule there is a proviso attached that you shall not take any part of the confession without taking the whole.

There cannot be a mislaid idea on this subject which is that if you introduce the whole you must believe the whole whereas you are at liberty to believe what you please, you cannot introduce what one party either Aff or Deft said by itself as if they were concerning the whole conversation must be related. What the Aff or Deft has said and the other party stood by hearing and made no reply, but let the other go on charging him with something that is good, but however on the ground of the other party's declaration, that the Aff or Deft not answering said his conduct is the ground of the admission.

But sometimes hearsay evidence is the proper testimony as for the best the nature of the case will admit. Thus the general report of a man's death is admissible. The general opinion of a man's general character for truth altogether and veracity is admissible, yet to altogether hearsay - By general character is meant

— Have also which he produces before the court.

What a witness has been heard to say, before the trial is often introduced to prove that he is inconsistent with himself — that his story out of court is different from that in court. It is never admitted for evidence of the fact to be proved, but for impeachment, & to detract from the credibility of his testimony. It may be introduced not only for impeachment but for corroboration — Thus where a child is brought into court to testify, those who heard him tell the same story out of court may be called in to testify to it, and thus strengthen the child's testimony.

Whenever a question is made respecting the pedigree of a family, hearsay testimony is admissible, what the ancestors of that family have been heard to say on this subject is good testimony. The same is true respecting the legitimacy of children. What their parents have been heard to say before their deaths respecting their birth is good evidence. The last exception respecting hearsay testimony under the head of parole evidence is that concerning the bounds of land. Here the testimony of the ancient proprietor is good. 1 mod. 282 n 333 2 Wils. 431. B. & P. 233 Go. 274.

It is often objected that testimony is irrelevant if it does not go to prove the facts alleged. To determine whether it is or not is left

inconvenient with the court, and if his counsel miscounts the court will reject it at once, because his dangerous to go to the jury. Thus a man mistakes his plea to a note and instead of pleading full payment pleads an accord and satisfaction.

Any testimony that bears upon any part of the issue is relevant and must be admitted and so if it applies to the whole. The last however is wholly immaterial, still if the evidence is relevant it shall be admitted. Thus a man sues another for calling him a liar this not actionable, but instead of demurring, he pleads not guilty then the Off goes on to prove that the Deft did call him a liar - This is relevant to the issue - shall it be rejected? Our Just. said no and the Court of Errors reversed it. In Eng^l the court give liberty to the parties to withdraw when such evidence is offered.

Another rule is that a witness is not obliged to answer any question to incriminate himself. This is a general rule however and requires some observations. The ground of this rule is that he may be punished if he incriminates himself for the crime to which he testifies. he man is obliged to accuse himself to the world of a crime, if this accusation does not make him liable to punishment.

The witness is not under oath to expose his own turpitude. But a man is obliged to swear when the act committed is contrary to law, if it only subjects him to the loss of property as a pecuniary maintenance.

Thus a man is obliged to swear if asked, that various interest was received on a note - but not that he received it. 2 Bac. 433

The manner of obtaining testimony witnesses be considered.

I shall first notice it at Com Law. Courts of Com Law know of no other way to get testimony except by witnesses viva voce, no reason, or depositions when the witnesses can be had. Much can be gained from the appearance, manner &c of the witness - On the other hand is a great embarrassment to justice when the person is sick, at sea &c. This is in Courts of Com Law. But in Courts of Chan^y the method is directly opposite, all the proceedings are by depositions, tho' under the best regulations. 2 Bac. 296.

In Com Law the proceedings in civil cases are the same as in Chan^y. If the witness is more than 20 miles distant you may go and take his deposition, after first notifying the other party to attend and hear - This is done by Stat.

But in criminal cases no depositions are allowed as at Com Law.

Now as to the number of witnesses required to substantiate a

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fact. The common law rule is that one credible witness is sufficient to prove any fact. The rule of the civil law requires two.

In short there must be sufficient testimony to convince the court of the truth of the facts alleged.

The lowest common law rule is one credible witness, but I doubt whether one deposition and that from a statement stranger is sufficient to satisfy the court of the truth of any fact - how is it for us to call the jury from the vicinage where the thing was transacted and being better acquainted with the state of the facts.

Co. l. 44. l. 6. d. 6.

There are exceptions to this rule. When one witness swears one thing and another witness swears that thing to be absolutely false, here you must introduce further proof.

In Eng. in case of treason the common law requires two witnesses.

In court in criminal prosecutions the law requires two witnesses. If you depend on the facts independently of any other proof, but you depend on the concatenation of events one witness in conjunction with the circumstantial evidence is sufficient.

1 Burr. 61.

The mode of compelling a witness to appear at court. This is done by a writ called a subpoena signed by the Clerk of the court, or by that a Justice of the peace may sign it, or he may

is required to come by a summons, and in order to subject him you must tender him his fees and travel as the law directs, and one days attendance.

Then if he don't come the court will order a subpoena, and if the officer swears that he read it in his presence, on hearing, the court may then issue a capias. But to subject him he must be called in court three times avoibly by name, then if you lose your case for the want of his testimony, he is liable for the consequences, and you may recover of him. But this is difficult to be proved, that you lost your case by means of his absence. However if you can prove it you may have a new trial, or recover full damages of the witness.

1 Pha 310. 2 20 1150.

Or after he is compelled to come into court, and remains obstinately silent and will not speak, the court may issue an attachment for contempt, and commit him to prison till he will speak.

2 Buo 294.

All Com law witnesses are privileged from arrests, while going to, returning from, or remaining at court, and if arrested by an officer not knowing that they are witnesses, the court will liberate them by a supersedeas upon application being made. The rule I think is inflexible, which is to grant the supersedeas or protection in the first place, which can be shown to the officer on the spot.

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Oral & Written Evidence.

In all those cases in which written evidence is the proper testimony, oral is necessarily excluded, and nothing can be proved by it. The best and most important species of written evidence is that of Records. This is a word of extensive signification, and includes the doings of legislative bodies, which can only be proved by ^{the authority} an attested copy.

Whether a case by a legislative body, or the proceedings of courts of justice is matter of record, and cannot be questioned. The propriety of a judgment of court may be questioned by a writ of error, but it cannot be questioned in any collateral manner however erroneous & void, unless reversed. A has a trial with B and obtains judgment against him, now this can't be vacated unless by a new trial or by a writ of error.

There is no such thing as attacking a judgment that exists, but you may deny the existence of one under the plea of null & void record, and this shall only be tried by itself being of so high a nature, as respects certainty.

9
Test. I shall notice legislative acts which are of a general nature and binding on every citizen, these acts are subject to the decision of the judiciary, whether they are constitutional or not.

It is immaterial about the binding force of these acts whether the constitution is written or not. In this state we have no written constitution. If a constitution exists it cannot be attacked and the judiciary must decide whether these are according to the constitution.

Legislators are no more judges of their own acts than children, and the moment they do it, they assume judicial power.

Private acts of the legislature are only binding on the parties concerned. Thus if the Legislature should make a law respecting bankruptcy this would be binding on all the citizens of the Commonwealth, but in making an insolvent act in favour of J. Stokes only his creditors are concerned, and those only are bound by it.

Judgments of courts are always evidence of the facts to which they bear record so long as they exist, but they bind only parties and parties. Thus A conveys to B in fee simple with covenants of warranty and B sues A in an action of ejectment and B don't want A to defend therefore B loses his case. Now is this judgment of the court conclusive evidence that A did not possess a legal title to the property B sues A, and Court say that judgment is not conclusive evidence against A he not being a party nor being, because he was not reached in to defend.

Acts of a Legislature are said to be either general or special,

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be either public or private. Whatever concerns the whole community is general. But what concerns only individuals is special.

Thus should the Legislature enact that all persons who learn trades must serve 7 years this would be a general act - But if it is said that all joiners that serve 7 years, this would be special. With respect to a general case, it is never necessary to give it in evidence. This means that law. The lawyer reads it only to refresh the minds of the Court and jury, but they are bound to notice it without his reading it - But in all special acts where a man claims he must show it - neither is it necessary to state a general act in your declaration or pleadings, and even if the matter of defence is proved not plead it specially.

A special act is usually pleaded. There are some rules in the elementary writers respecting this special pleading which I think are incorrect - he may show it in evidence when it is proper to be shown as much as a bond. He must give it in evidence or else the Court cannot take notice of it. Holt 227. 20. 7. 112.

The reason of the above rule is that general acts are supposed to be known and special ones not. There are cases where public and private acts both must be pleaded specially.

Whenever you attempt to avoid any specially or an instrument under hand and seal by a general act, it must be pleaded specially, i.e. detailed upon record. Thus money, pleaded to a bond. If it is an action granted upon bond contract it may be given in evidence.

But it is if to a specialty to give it in evidence, but the opposite party must be notified that he may not be surprised at the trial. This regulation about notice applies to all specialties. 4 G. 1178. 59-60-61. 79.

There is another matter to be given in evidence which is necessary to mention. Whenever there is an information upon a point that against a man and another that that exempt him, that that must be pleaded specially - the general one. No principle is this only a nicety of thinking. If there is saving process, it need not be pleaded specially, not guilty is sufficient, and then give the Stat. in evidence.

Of Private Acts - The Stat. book is no evidence, a man must have a copy exemplified by the proper officer. The laws of other countries must all be proved and given in evidence. If you want to avail yourself of the laws, you must give the law in evidence and you must plead it specially if so required in other cases.

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Of the mode of proving the laws of other countries and other States. If you have the Stat-book printed by the authority of government, this is sufficient.

But there are many laws which are not in Stat-books and are not of authority. These you must prove as you would any other things or customs and usages.

But how are records to be proved? There are provisions made in every Stat-book, and these rules are adverted and attended to, and it is clear that they must be proved by copies, because to transmit records abroad is both inconvenient and impracticable. These copies must be exemplified as the Stat requires. Some kinds of these copies in Eng^d must be under seal - we have none of this kind in this State unless they are to go abroad out of the State.

The common mode of obtaining these copies in our own country is for the officer or keeper to certify, under his official oath, that it is a true copy. These are called office copies. This kind of copies must if it can be, always be obtained.

But to elude may be used or gone abroad - then some person must compare and swear to a true copy. These are called sworn copies, it must also be proved that an office copy could

not in fact. If the copy is to go out of the State, the judge must satisfy that this man is Clerk, because he appoints his Clerk.

But how shall it be known in Georgia that this man is Judge? Then he must get a certificate from the Secretary of State to this point. But how shall they know the Secretary of State? Then he must get a certificate from the Governor. But how do they know the Governor? Here you must stop, this is a no-plus-ultra.

There are cases where records having been lost, copies have been received in Eng^d without being sworn to. But these are ^{all} cases where the right has been claimed for a great length of time.

mod 117. Talk 185.

Where an action is founded on record as debt or judgment, or where a record is relied on as matter of defence, the only plea is that the record is not the record. This issue never goes to the jury - The court determine the business by inspection.

A former verdict is sometimes good evidence in a subsequent trial. However in order to make it good evidence it must be between the same parties and upon the same point. Thus formerly there was a contention about black acre, now there is one about white acre, between the same parties, and the latter dispute on the same point, therefore the former verdict may be given in

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evidence. 5 Inst 443. Haddespl 172.

But even if the action is respecting the same point, and not between the same parties, the former verdict cannot be given in evidence. In order to warrant the admission of a verdict, a copy of the judgment, or the judgment must be produced. This regulation has now gone much out of practice.

In all appellate jurisdictions the former verdict seems to have no influence.

It is sufficient for the officer to show his *quid pro quo* and he may give the execution in evidence, but the appellant cannot until he has obtained judgment. 1 Ed. Reg. 733.

Courts of Chancery are not in Eng. courts of record. In our country there is no difference. Facts given in evidence in a bill in Chancery are evidence against the person presenting the bill in another case. It has been long settled and established that what is averred and charged in a bill in Chancery is taken for evidence in the same manner as a confession but indeed a confession of every thing stated or charged in the bill but only of that from which he prays relief. 1 Ed. 221.

But in case that the confession may be of any effect,

The bill must have been proceeded upon in a court of Chancery.

Any confession in writing, as a letter is as good evidence as hard confession. But if the opposite party objects then you must prove the hand writing. This rule is dispensed with if the correspondence is foreign. Gal. Ch. R. 236.

Extracts from a copy of a record are as good evidence as the whole answer or plea in that must be given.

2 Vent. 144. 30 288. 1 Sid. 48.

The guardian's answer or plea for the infant can never be improved as evidence against the infant. So also the plea, or answer of a trustee, is not evidence against the cestui que trust.
2 Vent. 72 3 mod. 259.

Whenever you wish to improve any answer to a bill in Chancery as evidence in another case, you must produce the bill itself, that the court may see both the charge and answer.

The answer signed and sealed, if not sworn to with oaths as any other confession under hand and seal. You need not answer to an answer in Chancery.

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If the answer is not challenged there is no presumption that it is untrue and it is not subject to impeachment. If the answer is not challenged tho it is false. Its being signed & sworn affords it no proof that it was delivered under oath, because it is not part of the record. If its challenged then the presumption is that it is sworn to. If its used in court its presumed to be sworn to because the court will not suffer an affidavit to be admitted as evidence unless its under oath.

If it can be proved that it was read in court the legal presumption is that it has been sworn to.

In the case of affidavit there is no cause for perjury it only operates as any other voluntary confession would against himself. 3 mod 36. 1 How 399.

There is another difference between an answer and an affidavit on a different ground. A copy of an affidavit is not good evidence because not being part of the records of the court. The original affidavit can be produced and this is better than any copy of it. Affidavits are made for particular purposes incidental to legal prosecution.

I will now make some observations respecting Depositions in

deposition.

Depositions are inferior evidence to live oral testimony. However if they have been once used, they may be used again in another trial, if it be between the same parties, provided the witness is dead and cannot be obtained. Also it may be between the same parties, and also if the witness is taken sick on the way and cannot come it may be used if all this can be proved.

There is such a thing as a deposition in perpetuum memoriam *vi*. This is often a very great convenience in judicial proceedings.

Depositions taken *abundantia litum* are of no avail. But if a man expects to be sued and his witnesses are old and about to die, or about to remove to a distant country, the court with proper application being made for the purpose, grant him a commission to appoint some person to go, and take his deposition in order that it may remain in perpetuum memoriam *vi*, and this may be used any time afterwards in case a suit should be commenced. This is admissible only in extraordinary cases.

There is one species of testimony in writing standing on different grounds from any other.

Evidence

The general rule of the law requires a record in evidence only when it is recorded, as a deed - you cannot undertake to prove these things only by the record.

There is a distinction between a thing recorded and a record. A copy of a record is admissible evidence, but a copy of a thing recorded, as a deed, is not good testimony, because the thing recorded is not part of the record, and can therefore be produced.

The law requires certain things to be on record, and yet if they are not, other testimony is introduced. Thus the law requires in England and Scotland that all marriages, births of children &c. should be on record - However this is not done in all cases, and a dispute arises about a person's age when the he is a minor, if his birth is on record the dispute is ended - but suppose it is not on record, what shall be done? Then you must introduce the mother, if she is dead - then the neighbors to prove the day of his birth. This is admissible, and yet the law requires it to be on record.

This is universally true that where the thing is required to be recorded in order to give validity to the instrument, as a deed it must be recorded.

But when it is not necessary that the thing be recorded as a marriage or birth in order to give it validity, then the law only makes it a duty. However if it is necessary to give validity to a marriage or birth then it should be recorded - then the record would be the only proof. But if a birth or marriage is not recorded which position ought first to be proved, then you may introduce parol proof to show the time of the birth or marriage, or this is the best evidence the nature of the case will admit.

The usual method to prove marriages in Connecticut is by a certificate from the minister who performed the ceremony, but instead of this a man brings his brother or sister who saw the marriage - this parol is not so good evidence as the certificate.

In order therefore to be strictly correct, and observe the rules of the law, you must first show that it is not on record, and then introduce parol testimony, but if it is required to be on record to give it validity that proof alone must be shown.

Almanacs are always introduced as testimony to show that for which they were made. Thus a particular act is said to have taken place on the 14 of March 1680, now to ascertain what day in the week it was introduced, an Almanac of that year is good -

Family bibles, where the marriages, births and deaths of children are recorded, is good evidence. Every body is satisfied with this testimony, and therefore is admitted, as it comes under a general rule.

Inscriptions on tomb stones are admitted as evidence to the persons death, and for the same reason. Co L. 227. 2041

Whoever claims title to any property by deed, must upon the principles of the Com law show that deed. 2 Bac 305

This rule extends both to privies and parties of an estate. Thus the tenant for life must not only show the deed under which he claims, but that under which his owner claims, if required. Co Litt 267. 10692

In every conventional estate by deed, the paramount estate must upon the Com law principles be shown i.e. The present owner must take to himself all the deeds of his predecessors given of that land. i.e. as often as the land has been conveyed from one purchaser to another, each one has taken a different deed and the last should have all the deeds of the former

owner. The first purchaser took a deed he should also take the deed of the original proprietor: the next vendor takes a deed to himself he should also take the two former titles, and the presumption of the law is this is done, and that they can all be shown.

If a man conveys land with covenant of warranty the tenant proprietor has only to show his deed of warranty.

A tenant in fee, or he who claims title by virtue of the land by an execution, is not obliged to show the deed because it is supposed to be part of his power — the heir or owner having the deed.

12. 6. 94

A tenant by the curtesy must show the deed. et alia super

We see four recording counties in England — Here all deeds are recorded each in the county when it belongs.

A copy of a recorded deed is not as good as good as the deed itself, for if it was a man might get title by taking a copy from the record and forging dead witnesses. Therefore the deed itself must be shown, but when a copy is admitted it is on the principle that the deed itself is out of his power. But they never go so far as to allow you to show that your deed is recorded the deed itself must be shown.

Between the immediate parties the title

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A deed must always be shown here as well as in England, but when removed from the first parties a copy is admitted here but not in England.

When title is acquired by the levy of an Execution a copy is admitted both here and in England - The admission of copies as evidence is a dangerous principle. practice.

There are exceptions to the rule that the deed itself must be given in evidence.

If the deed is in the hands of the adverse party, you are not obliged to show it, but may prove the contents by paid testimony. 10 Co. 92.

So when the deed is lost by time or accident, you are not obliged to show it, but you must first prove by a set of facts that it is lost and then prove the copy.

A deed in order to be admissible testimony must be executed, and the instrumentary witnesses if not dead and within the reach of process must be obtained to testify.

But if they are dead or without the reach of process then you must show the execution by other witnesses or prove the handwriting of the man himself. To prove the hand writing is a

Dangerous method of coming at the bath among admirers for
disturbance, and practices among persons.

But the testamentary witnesses rarely ever see the delivery of the deed or instrument. What shall be evidence of delivery? If any person saw the delivery, their testimony is evidence. But none saw it, then you can prove nothing about it. Then we must say the presumption is that it was delivered and so it must stand, till proved ^{to be} otherwise. It may have been forged and consequently never delivered.

The original design was that the witness should see the deed delivered. But according to our practice, possession of the deed is made evidence. This however may be rebutted by other evidence.

As to the proof of the execution and delivery of a deed. If it is 30 years old without blanchit, rasure, or interlineation, and no paper accompanying it, tis proved of itself. But it must be sealed, and if the seal is broken off any way, tis void. Thus if eat off by mice tis of no effect.

The court of Chan.^y would establish more

6th Decr.

in instrument - I see no reason why we may not prove that it was cut off, as well as that it was sealed at first.

20. 8. 11. 5.

Now here there is a joint and sealed contract and the seal is taken off & is void, but if the contract is joint and several, it is good against him in whose name it remains.

5. 11. 13 - 2 Novr 28 and 9.

If the witness to a deed becomes infamous, he is to be considered as dead. 11. 8. 38

As to the respect to testamentary instruments, the testimony grows weaker and weaker as you advance. If all the witnesses don't sign it at the same time, and in the presence of each other, all must come and testify.

But if one witness swears that he signed it and that he saw all the others sign it, he is sufficient. But if all the witnesses are dead you must prove the hand writing of the originator of the instrument - this is the only method to be pursued.

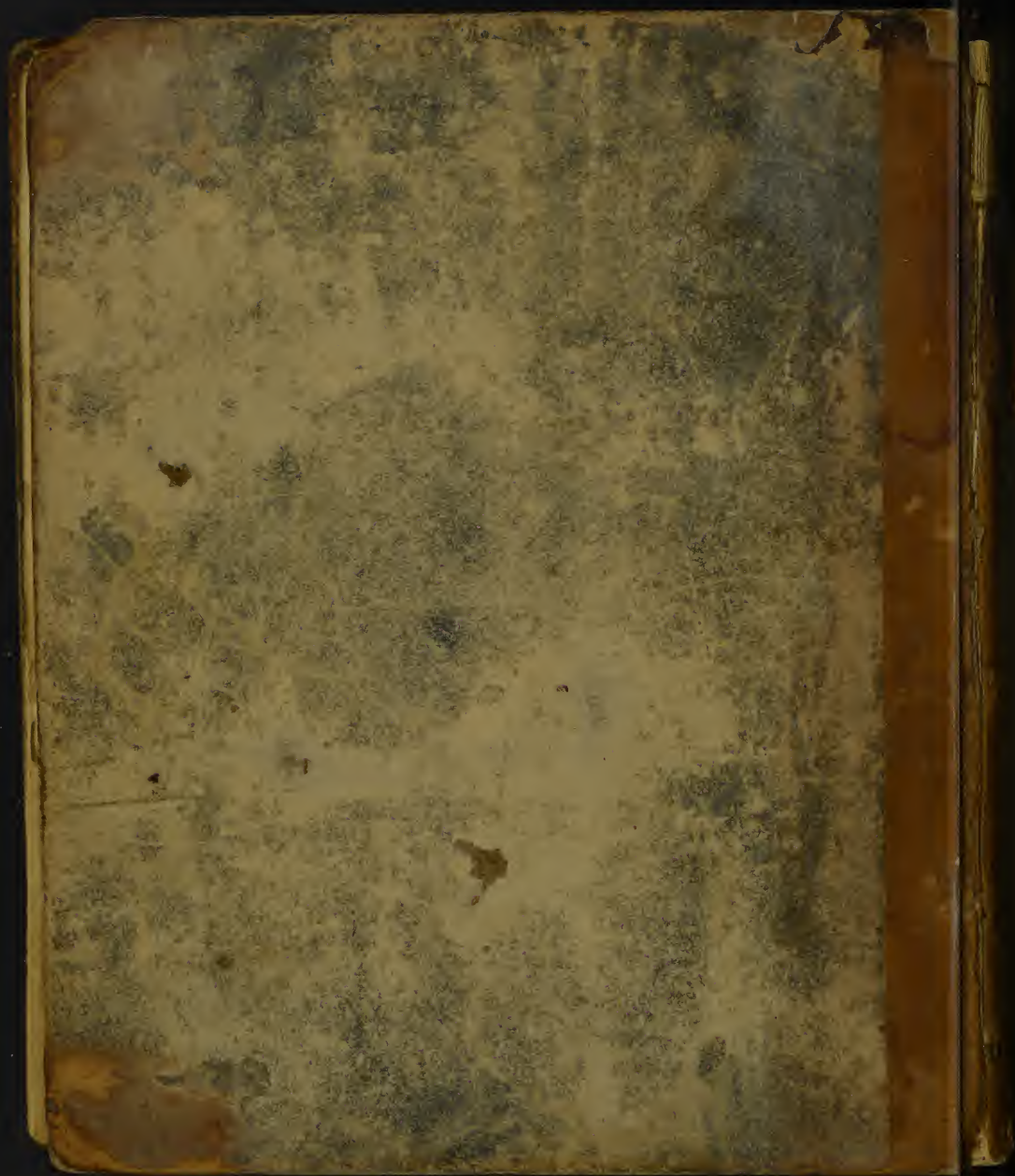
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REEVE &

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